International Labour Conference
82nd Session 1995

Report III
(Part 4A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

General report and observations concerning particular countries

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International Labour Office Geneva

International Labour Conference
82nd Session 1995

Report III
(Part 4A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(Articles 19, 22 and 35 of the Constitution)

General Report and observations concerning particular countries

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[1] The roman numerals and letters refer to sections of Part Two of this report and the arabic numerals to the numbers of the Conventions.

[2] The abbreviations used in respect of direct requests are the following:
"Art. 22": application of ratified Conventions in member States.
"Art. 35": application of ratified Conventions in non-metropolitan territories.
"Subm.": submission of Conventions and Recommendations to the competent authorities.
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UZBEKISTAN		Subm.
VENEZUELA	General Report, para. 132 I B, Nos. 22, 41, 87, 95, 122, 143, 150 III	Art. 22, Nos. 14, 88, 95, 111, 117, 122, 127, 140, 142, 143, 149, 153
YEMEN	General Report, paras. 91, 97, 101, 132 I A and B, Nos. 87, 98 III	Art. 22, general Art. 22, Nos. 95, 111, 132, 135, 156

Country	Observations made by the Committee (published in the present Report)[1]	Direct requests addressed by the Committee to the Governments (not reproduced in the present Report)[2]
YUGOSLAVIA	I A	
ZAIRE	General Report, paras. 91, 101, 126 I A and B, Nos. 29, 81, 88, 94, 98, 121 III	Art. 22, Nos. 29, 95, 100, 102, 117, 150, 158
ZAMBIA	I B, Nos. 45, 89, 97, 122, 136	Art. 22, Nos. 136, 141, 144, 150, 159 Subm.
ZIMBABWE	I B, No. 45	Art. 22, No. 14 Subm.

PART ONE

GENERAL REPORT

GENERAL REPORT

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 65th Session in Geneva from 16 February to 3 March 1995. The Committee has the honour to present its report to the Governing Body.

2. The Committee learned with deep regret of the death of Mr. José Maria RUDA who chaired the Committee from 1988 to 1994. It wishes to pay tribute to the memory of so eminent a jurist and personality who, throughout his life, and particularly as member, then President of the International Court of Justice, strove constantly for the reign of peace among nations and the establishment of social justice and respect for human rights. In his 17 years of work with the Committee, Mr. José Maria RUDA made an inestimable contribution to promoting the application of international labour standards and reasserting the authority of the ILO's supervisory bodies, exemplifying by his views and behaviour the Committee's tradition of objectivity, independence and impartiality.

3. The Committee also learned with deep sadness of the death, which occurred during the present session, of Mr. Roberto AGO, a member of the Committee since 1979. A special tribute was paid at ILO headquarters to the memory of a man who, by his immense experience, constant attachment to impartiality and objectivity and his firm commitment to the values of the ILO, has made an invaluable contribution to the cause of the Organization's standard-setting activity. An international jurist of great talent, Judge of the International Court of Justice and a negotiator of outstanding ability, Mr. Roberto AGO has left an indelible mark on the work of the Committee. His tireless efforts within the various bodies of the ILO over a period of almost 50 years, in particular as Chairperson of the Committee on Freedom of Association, have been a decisive contribution to the Organization's accomplishments during the second half of the twentieth century.

4. The Committee noted with regret that Mr. Benjamin AARON asked to be relieved of his duties as member of the Committee. It would like to pay tribute to the outstanding contribution he made to the work of the Committee during his nine years as a member, thanks to his vast experience and his steadfast commitment to the principles of the ILO.

5. The Governing Body has appointed Ms. Janice R. BELLACE as a member of the Committee. It gave the Committee great pleasure to welcome her to its present session.

6. The present composition of the Committee is as follows:

Mrs. Badria AL-AWADHI (Kuwait),

Barrister-at-Law; former Dean of the Faculty of Law, Kuwait; former Professor of Public International Law, Kuwait University; member of the International Commission of Jurists; Vice-President of the International Federation of Women Lawyers; member of the International Law Association; Vice-Chairman of West Asia Committee on Environmental Law of the International Union for the Conservation of Nature (IUCN); member of the Arab Court of Arbitration; member of the Arab Committee on Freedom of Association;

Ms. Janice R. BELLACE (United States),

Professor of Legal Studies and Management, and Deputy Dean of the Wharton School, University of Pennsylvania; Adjunct Professor at the University of Pennsylvania Law School; General Editor, Comparative Labor Law Journal; member of the Executive Board of the US branch of the International Society of Labour Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former secretary of the Section on Labor Law, American Bar Association;

Mr. Prafullachandra Natvarlal BHAGWATI (India),

Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the National Committee for Social and Economic Welfare of the Government of India; Ombudsman for the national newspaper *Times of India*; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of El Taller; Chairman of the Panel for Social Audit of Telecom and Postal Services in India; member of the UN Human Rights Committee;

The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados),

Former Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica;

Ms. Robyn A. LAYTON, Q.C. (Australia),

Commissioner on Health Insurance Commission; Director, National Rail Corporation; Former chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal; Barrister-at-Law;

Mrs. Ewa LETOWSKA (Poland),

Professor of Civil Law (Institute of Legal Studies of the Polish Academy of Sciences); former parliamentary ombudsman; former member of the Legislative Council to the Council of Ministers; former member of the Commission for the

Reform of Civil Law; member of the Helsinki Committee; member of the International Commission of Jurists;

Mr. Roman Zinovievich LIVSHITZ (Russian Federation),
Doctor of Law; Principal Researcher at the Institute of State and Law of the Academy of Sciences of the Russian Federation; Professor of Labour Law and Jurisprudence at the Moscow International (Russian-American) University; member of the Scientific Advisory Council at the Supreme Court of the Russian Federation; honorary lawyer of the Russian Federation;

Baron Bernd von MAYDELL (Germany),
Professor of Civil Law, Labour Law and Social Security Law; Director of the Max Planck Institute for Foreign and International Social Law (Munich); Vice-President of the European Institute for Social Security (Leuven);

Mr. Kéba MBAYE (Senegal),
Former Vice-President of the International Court of Justice; First Honorary President of the Supreme Court of Senegal; former President of the Constitutional Council of Senegal; member of the Institute of International Law; member of the Curatorium of the Academy of International Law at the Hague; former President of the International Commission of Jurists; former President of the United Nations Commission on Human Rights; Deputy President of the International Court of Arbitration of the International Chamber of Commerce; member of the Royal Academy of Overseas Science of Belgium and of the Academy of Overseas Science of France;

Mr. Cassio MESQUITA BARROS (Brazil),
Independent lawyer specializing in labour relations (Sao Paulo); Titular Professor of Labour Law at the Law School of the public University of Sao Paulo and the Law School of the private Pontifical Catholic University of Sao Paulo; Academic Adviser, San Martin de Porres University (Lima); winner of the medal for "Honra ao Merito de Trabalho" awarded by Decree of the President of the Republic for a major contribution to the development of labour law; winner of the medal for "Honra ao Merito Judiciario do Trabalho" awarded by the Higher Labour Tribunal for his important contribution to the administration of justice; Honorary President of the "Asociación Iberoamericana de Derecho del Trabajo y Seguridad Social" (Buenos Aires, Argentina); Honorary President of the "Academia Nacional do Direito do Trabalho" (Rio de Janeiro) (composed of Brazilian experts in labour law); member of the International Academy of Jurisprudence and Comparative Law (Rio de Janeiro) and the International Academy of Law and Economy (Sao Paulo); honorary member of the Association of Labour Lawyers of Sao Paulo; member of the Order of Barristers of the State of Sao Paulo;

Mr. Benjamin Obi NWABUEZE (Nigeria),
LLD (London); Hon. LLD (University of Nigeria); Senior Advocate of Nigeria; 1980 Laureate of the Nigerian National Merit Award; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member, Governing Council, Nigerian Institute of International Affairs and Fellow of the Institute; former member, Governing Council, Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education; former Minister of Education for Nigeria; Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993);

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),
Honorary First President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University of Madagascar; former Arbitrator of the ICSID and of the International Civil Aviation Organization; judge of the Administrative Tribunal of the ILO; former member of the International Council for Commercial Arbitration; former member of the International Court of Arbitration of the International Chamber of Commerce; Alternate Chairman of the Staff Committee of Appeals, African Development Bank; member of the United Nations International Law Commission;

Mr. Boon Chiang TAN (Singapore),
BBM, PPA, LLB, (London) Dip. Arts, Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former President, Copyright Tribunal; former Chairman, Income Tax Board of Review; former Vice-President (Asia) of the International Society of Labour Law and Social Security;

Mr. Fernando URIBE RESTREPO (Colombia),
Barrister-at-law; former member of the Supreme Court of Justice of Colombia; former President of the Court of Justice of the Cartagena Accord; former President of the Supreme Court of Colombia; former Professor of International Labour Law at the National University of Colombia; former Professor of Labour Law, Universities *Externado de Colombia* and *Pontificia Javeriana*; former Professor of Philosophy of Law at the Bolivariano University of Medellín;

Mr. Jean-Maurice VERDIER (France),
Professor of Labour Law at the University of Paris X; Honorary President of the University of Paris X; Honorary Dean of the Faculty of Law and Economics; Director of the Institute for Research on Undertakings and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); former Director of the Institute of Labour Social Sciences, University of Paris I; Vice-President of Libre Justice, the French section of the International Commission of Jurists; former Professor at the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; former President and Honorary President of the French Association of Labour and Social Security Law;

Mr. Budislav VUKAS (Croatia),
Professor of Public International Law at the University of Zagreb, Faculty of Law; associate member of the Institute of International Law; member of the Organization on Security and Cooperation in Europe (OSCE) Dispute Settlement Mechanism; member of the Working Group on National Minorities of the Central European Initiative; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources; former member of the Permanent Court of Arbitration;

Sir John WOOD (United Kingdom),
CBE, LLM; Barrister; Chairman of the Central Arbitration Committee;

Mr. Toshio YAMAGUCHI (Japan),
Honorary Professor of Law at the University of Tokyo, Professor of Law at Kanagawa University; member of the Japanese Central Committee of Labour

Relations; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

7. The Committee elected Sir William DOUGLAS as Chairperson and Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

8. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd (Geneva, 1947) Session, the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;

(ii) the information and reports concerning Conventions and Recommendations, communicated by Members in accordance with article 19 of the Constitution;

(iii) the information and reports on measures taken by Members in accordance with article 35 of the Constitution.

9. The Committee, after an examination and evaluation of the above-mentioned reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related instruments and their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 84 to 116 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 84 to 116 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 117 to 129 below). Part Three, which is published in a separate volume (Report III (Part 4B)) reviews the reports supplied by governments under article 19 of the Constitution on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982 (see paragraphs 130 to 134 below).

10. In carrying out its task, which consists of indicating the extent to which the situation in each State appears to be in conformity with the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standard-related obligations.

11. In this context, the Committee again noted the participation of the Chairperson of its 64th Session as an observer in the general discussion of the Committee on the Application of Standards of the 81st Session of the International Labour Conference (June 1994). It noted the decision of the Conference Committee on the Application of Standards again to request the Director-General to invite the Chairperson of the 65th Session of the Committee of Experts on the Application of Conventions and Recommendations to attend as an observer the general discussion of the Committee on the Application of Standards of the 82nd Session of the International Labour Conference (June 1995). The Committee accepted the invitation.

II. General

Membership of the Organization

12. Since the Committee's last session, South Africa has resumed membership of the ILO (on 26 May 1994); the number of member States of the ILO has risen from 170 to 171.

New standards adopted by the Conference in 1994 and the coming into force of Conventions

13. The Committee noted that at its 81st Session (June 1994), the International Labour Conference adopted the Part-Time Work Convention (No. 175) and Recommendation (No. 182), 1994.

14. The Night Work Convention, 1990 (No. 171), has been ratified by Cyprus and came into force on 4 January 1995. The Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), has been ratified by Mexico and Australia and will come into force on 8 June 1995.

Ratifications and denunciations

15. In 1994, 132 ratifications by 33 member States were registered. The total number of ratifications at 31 December 1994 was 6,182. Between the beginning of 1995 and 3 March 1995, 30 ratifications by nine member States have been registered.

16. The total number of denunciations not accompanied by the ratification of a revised Convention was 76 at 3 March 1995.

17. Since the Committee's last session, the Director-General has registered two denunciations not accompanied by the ratification of a revised Convention, on the part of the United Kingdom: the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), and the Holidays with Pay (Agriculture) Convention, 1952 (No. 101). The Government states that by denouncing these instruments it wished to ensure that, whatever the outcome of the consultations on the future of the Agricultural Wages Board, it would be free to make any changes to the existing arrangements that were necessary, without being restricted by the requirements of the Convention. When the Government announced, on 20 December 1994, the retention of the Agricultural Wages Board arrangements, it indicated that there would be a further review of the matter in five years. The outcome of that review cannot be predicted. According to the Government, continued adherence to the Conventions would have severely limited the scope of the next review and would have restricted the scope for introducing more flexibility until the year 2004. The Government also states that one of the factors that influenced its decision to denounce these instruments was the call to do so from employers in the industry who, despite their support for the continuation of the Agricultural Wages Board, recognized that it was appropriate for the Government to have the necessary flexibility to reconsider these arrangements at some future date. Lastly, the Government states that since the possibility of denouncing a Convention only occurs once every ten years, it considered it necessary to take the opportunity while it was available. The Government concludes from this that the current denunciation procedure is too inflexible. It suggests that the question of denunciation procedures should be given high priority among the ILO's reforms in the standards area.

18. By a communication received on 22 August 1994, the Government of the United Kingdom also announced that it terminated the acceptance of obligations of the Minimum Wage Fixing Machinery (Agricultural) Convention, 1951 (No. 99), for Guernsey.

19. Since the Committee's last session, the Director-General has again registered three denunciations accompanied by the ratification of a revised Convention. The Indigenous and Tribal Populations Convention, 1957 (No. 107), was denounced by Peru following ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), was denounced by Mauritius following ratification of the Labour Statistics Convention, 1985 (No. 160). The Safety Provisions (Building) Convention, 1937 (No. 62), was denounced by Colombia following ratification of the Safety and Health in Construction Convention, 1988 (No. 167).

Constitutional and other procedures

20. The Committee was informed of the following decisions taken by the Governing Body in cases involving recourse to the constitutional procedures of complaint and representation and other procedures.

A. Complaints submitted under article 26 of the ILO Constitution

Complaint against Sweden

21. Consultations are being pursued concerning the complaint submitted by the Employers' delegate of Sweden to the 78th (1991) Session of the International Labour Conference alleging non-observance by Sweden of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). The Governing Body will examine the matter at its 262nd Session.

Complaint against Côte d'Ivoire

22. At its 261st (November 1994) Session, the Governing Body approved the report of the Committee on Freedom of Association which had examined a complaint presented by the Workers' delegates to the 79th (1992) Session of the International Labour Conference alleging non-observance by Côte d'Ivoire of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the report of the direct contacts mission to the country in October 1994.

B. Representations submitted under article 24 of the ILO Constitution

Representation concerning the Socialist Federal Republic of Yugoslavia

23. The Committee noted previously that the committee established to examine the representation submitted by the International Confederation of Free Trade Unions (ICFTU) alleging non-observance by the Socialist Federal Republic of Yugoslavia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), submitted its report to the 253rd (May-June 1992) Session of the Governing Body. The Governing Body noted that, while awaiting a decision by the United Nations, it was not possible to identify the Government concerned for the application of article 7 of the Standing Orders governing the procedure for the examination of representations submitted under articles 24 and 25 of the ILO Constitution. The Governing Body has still not set a date for the examination of the report.

Representation concerning Venezuela

24. With regard to the representation made by the International Organization of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) alleging non-observance by Venezuela of Conventions Nos. 87 and 98, the Committee on Freedom of Association at its May 1993 Session adopted interim conclusions and asked the Government to take measures with a view to modifying certain provisions of the legislation.

Representation concerning Guatemala

25. At its 259th (March 1994) Session, the Governing Body decided that the representation made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI) alleging non-observance by Guatemala of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), was receivable and set up a tripartite committee to examine the representation.

Representation concerning Myanmar

26. At its 261st (November 1994) Session, the Governing Body adopted the conclusions and recommendations of the tripartite committee which it had set up by a decision taken at its 255th (March 1993) Session, to examine the representation made by the International Confederation of Free Trade Unions (ICFTU) alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). In its conclusions it found that the exaction of labour and services under the Village Act and Towns Act was contrary to Convention No. 29. It urged the Government of Myanmar to take the necessary steps to ensure the application of the Convention on this point and to include full information on the measures taken in its reports under article 22 of the ILO Constitution on the application of Convention No. 29, so that the Committee of Experts can pursue its examination of the matter. The Governing Body declared the procedure closed.

Representations concerning Poland

27. The examination of the representation alleging non-observance by Poland of the Employment Policy Convention, 1964 (No. 122), made by the All-Poland Alliance of

Trade Unions (OPZZ) has been suspended at the request of the complainant organization. At the 261st Session of the Governing Body, the tripartite committee set up to examine the representation had before it a communication from the OPZZ dated 11 November 1994 stating that the above organization considered that there were now reasons for examining the representation. The tripartite committee decided to ask the Government to submit a statement on the matter, and will meet at the 262nd (March 1995) Session of the Governing Body.

28. At its 260th (June 1994) Session, the Governing Body decided that the representation made by the Independent and Autonomous Trade Union "Solidarnosc" alleging non-observance by Poland of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), was receivable and submitted it to the Committee on Freedom of Association for examination. In its 295th Report the Committee on Freedom of Association took note of the Government's communication indicating in particular that a new round of negotiations on the allocation of trade union assets which is the object of the complaint, will be held with representatives of the complainant organization and those of the All-Poland Alliance of Trade Unions (OPZZ). The Committee on Freedom of Association has asked to be kept informed of the results of the negotiations. It will examine the case at its 262nd (March 1995) Session.

Representation concerning Brazil

29. The tripartite committee set up to examine the representation made by the Latin American Centre of Workers (CLAT), alleging non-observance by Brazil of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), will meet during the 262nd (March 1995) Session of the Governing Body.

Representation concerning the Czech Republic

30. At its 260th (June 1994) Session, the Governing Body decided that the representation made by the Trade Union of Bohemia, Moravia and Silesia (OS-CMS) alleging non-observance by the Czech Republic of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was receivable and set up a tripartite committee to examine the representation.

Representation concerning Turkey

31. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Confederation of Turkish Trade Unions (TURK-IS) alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), was receivable and submitted it to the Committee on Freedom of Association for examination.

Representation concerning Congo

32. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Organization of Energy and Mines (IOEM), alleging non-observance by Congo of the Protection of Wages Convention, 1949 (No. 95), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Costa Rica

33. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Latin American Central of Workers (CLAT), alleging non-observance by Costa Rica of the Employment Policy Convention, 1964 (No. 122), was receivable, and set up a tripartite committee to examine the representation.

Representation concerning France

34. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the World Federation of Trade Unions (WFTU), alleging non-observance by France (French Polynesia) of the Labour Inspection Convention, 1947 (No. 81), and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), was receivable and set up a tripartite committee to examine the case.

Representation concerning Nicaragua

35. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Latin American Central of Workers (CLAT), alleging non-observance by Nicaragua of the Protection of Wages Convention, 1949 (No. 95), the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the Employment Policy Convention, 1964 (No. 122), was receivable and set up a tripartite committee to examine the representation.

Representation concerning Paraguay

36. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Latin American Central of Workers (CLAT), alleging non-observance by Paraguay of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Peru

37. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Latin American Central of Workers (CLAT), alleging non-observance by Peru of the Social Security (Minimum Standards) Convention, 1952 (No. 102), was receivable and set up a tripartite committee to examine the representation.

Representation concerning Uruguay

38. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and its affiliate, the National Single Trade Union in Construction and Similar Activities (SUNCA), alleging non-observance by Uruguay of the Safety Provisions (Building) Convention, 1937 (No. 62), the Labour Inspection Convention, 1947 (No. 81), the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Health Services Convention, 1985 (No. 161), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Gabon

39. At its 261st (November 1994) Session, the Governing Body decided that the representation made by the Federation of Miners, Oil and Other Workers (FETRAMIP) and the International Organization of Energy and Mines (IOEM) alleging non-observance by Gabon of the Protection of Wages Convention, 1949 (No. 95), was irreceivable on the grounds that the alleged breaches were not committed within the bounds of Gabon's jurisdiction.

C. Special procedures concerning freedom of association

40. At each of its last meetings (March, June and November 1994), the Committee on Freedom of Association had before it an average of 110 cases concerning nearly 50 countries from all parts of the world, in which it presented interim or final conclusions, or cases of which the examination has been adjourned pending the arrival of information from governments (292nd to 296th Reports). Some of these cases have been before the Committee on two occasions. Moreover, since March 1994, 48 new cases have been submitted to the Committee. Direct contacts or advisory missions concerning cases pending before the Committee on Freedom of Association visited Côte d'Ivoire and New Zealand.

Functions in regard to other international and regional instruments

A. United Nations Covenants and Conventions concerning human rights

41. The Office regularly sends information, in accordance with existing arrangements with each one of them, to the various bodies responsible for the application of United Nations Conventions that fall within its competence. These bodies constitute the supervisory machinery established by the United Nations to examine the reports that governments are required to submit on each of the instruments that they have ratified. Since the Committee's last meeting, the following activities have been undertaken:

- *International Covenant on Economic, Social and Cultural Rights*: the Office took part in the Tenth (May 1994) and Eleventh (November-December 1994) Sessions of the Committee on Economic, Social and Cultural Rights and presented reports on four and three countries respectively;
- *International Covenant on Civil and Political Rights*: reports were presented on five countries for the 50th (March-April 1994) Session of the Human Rights Committee and on six countries at the 52nd (October-November 1994) Session;
- *Convention on the Elimination of All Forms of Discrimination against Women*: reports on 11 countries were submitted to the 14th (January-February 1995) Session of the Committee on the Elimination of Discrimination against Women, together with additional information on ILO activities in this area and a document on equal remuneration for work of equal value;
- *International Convention on the Elimination of All Forms of Racial Discrimination*: the Office took part in the 44th (March 1994) and 45th (August 1994) Sessions of the Committee on the Elimination of Racial Discrimination and presented reports on 14 countries for the 45th Session.

42. At its 50th (January-March 1994) Session, the Commission on Human Rights adopted a resolution asking the bodies responsible for the application of treaties to take into consideration the conclusions of supervisory bodies, particularly those of the ILO. The Committee notes with interest the fact that the Human Rights Committee decided at its 52nd Session to allow the specialized agencies of the United Nations system to present for the first time their comments on States' reports to the pre-sessional working group of the above-mentioned Committee, and notes that the Office will take part in the March 1995 Session for this purpose.

43. In accordance with Article 45 of the *United Nations Convention on the Rights of the Child*, the ILO was represented at the Sixth, Seventh and Eighth Sessions of the Committee on the Rights of the Child (Geneva, April 1994, September-October 1994 and January 1995). At 27 January 1995, 168 States were parties to the Convention. The Committee on the Rights of the Child examined the reports from the following countries: Pakistan, Burkina Faso, France, Jordan, Chile, Norway (Sixth Session); Honduras, Indonesia, Madagascar, Paraguay, Spain (Seventh Session); Argentina, Philippines, Colombia, Poland, Jamaica, Denmark, United Kingdom (Eighth Session). In its recommendations to States Parties, the above Committee called on States which have not yet done so to examine the possibility of ratifying the Minimum Age Convention, 1972 (No. 138), and other relevant instruments of the ILO. Furthermore, it called on States which it had found to be experiencing difficulties in areas falling within the ILO's competence, to request assistance of the Office. This information was communicated to the competent departments at headquarters and in the regions.

44. The Office transmitted information and comments on the reports of countries reporting to the pre-sessional working group of the Committee on the Rights of the Child. The latter Committee pursued its examination of the question of its relations with the specialized agencies at its Eighth (January 1995) Session. Proposals were made to maintain and strengthen coordination between the above Committee and those agencies, including the ILO. In this connection, it is important to recall that there are national bodies made up of representatives of the administrations concerned and of non-governmental organizations, which aim generally to promote the application of the Convention and propose measures to overcome difficulties in implementing it. In some countries, administrations whose remit covers labour, and employers' and workers' organizations have been invited to participate in the activities of these bodies. Their involvement can be of considerable significance in pointing the way for measures to abolish labour by children below a certain age and protect young people who work, so that they are in keeping with the provisions of international labour Conventions. It can also facilitate a review of policies concerning child labour, an assessment of their effects and, if need be, give them fresh stimulus.

B. European Code of Social Security and Protocol thereto

45. In accordance with the supervisory procedure established under Article 74(4) of the Code, and the arrangements between the ILO and the Council of Europe, the Committee of Experts examined 15 reports on the application of the European Code of Social Security and the Protocol thereto. It noted that the States Parties to the Code and the Protocol continue to apply them in full or nearly in full. The conclusions of the Committee regarding these reports will be sent to the Council of Europe.

46. In addition, a representative of the ILO took part, as technical adviser, in the meeting of the Steering Committee for Social Security of the Council of Europe (Strasbourg, November 1994). As in previous years the Steering Committee approved the conclusions of the Committee of Experts.

47. The Committee of Experts was informed that the European Code of Social Security was ratified by Spain on 16 March 1994.

C. European Social Charter and Additional Protocol

48. During 1994, in accordance with Article 26 of the European Social Charter, a representative of the ILO participated in an advisory capacity in several sessions of the Committee of Independent Experts set up to supervise the application of the Charter. Furthermore, a representative of the ILO participated in the meetings of the Committee for the European Social Charter. The aim of that Committee's work was to improve the supervisory procedures and contents of the Charter. The Committee has now finished its work and has prepared a draft Revised European Social Charter which will be submitted to the Council of Ministers of the Council of Europe at its next session.

Collaboration with other international organizations

A. Cooperation in the field of standards with the United Nations and specialized agencies

49. In the context of the collaboration established with other international organizations on questions concerning the supervision of the application of international instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations and other specialized agencies and intergovernmental organizations with which the ILO has entered into special arrangements for this purpose.

50. Thus, in accordance with established practice, copies of the reports received from governments on the Indigenous and Tribal Populations Convention, 1957 (No. 107), were forwarded for comment to the United Nations, the United Nations Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO); copies of these reports were also sent to the Inter-American Indian Institute of the Organization of American States. The WHO and the United Nations Centre for Human Rights also received a copy of one report on the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Copies of reports on the Rural Workers' Organizations Convention, 1975 (No. 141), were communicated to the FAO and the United Nations. Copies of reports on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), were communicated to the FAO, UNESCO and the United Nations. Copies of reports on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), were forwarded to the WHO, UNESCO and the United Nations. Copies of the reports received on the Nursing Personnel Convention, 1977 (No. 149), were communicated to the WHO. Copies of reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and on the Radiation Protection Convention, 1960 (No. 115), were sent to the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA), respectively.

51. Representatives of these organizations were also invited to attend the sittings of the Committee of Experts at which the Conventions in question were discussed.

B. Relations between the ILO and the European Union

52. At the 259th (March 1994) Session of the Governing Body, the Committee on Legal Issues and International Labour Standards examined a report prepared by the Office on the proposal for a decision of the Council of the European Union concerning the exercise of the Union's external competence at the International Labour Conference, when competence belongs both to the Union as a whole and to its member States. The Commission of the European Communities prepared this proposal following an advisory opinion given on 19 March 1993 by the Court of Justice of the European Communities, in which the Court found that competence to "conclude" the Chemicals Convention, 1990 (No. 170), belongs at the same time to the Community as a whole and to its member States. The proposal, which was rejected unanimously by the group on social questions of the Council of the European Union, recognized the ILO's institutional particularities and reviewed existing arrangements with regard to the framing of standards. It implied restricting the freedom of EU Member States to ratify international labour Conventions without the Union's endorsement, where "joint" competence applies. Many members of the Committee on Legal Issues and International Labour Standards of the Governing Body feared that the proposal might hold down the number of ratifications of certain ILO Conventions by Member States of the European Union.

53. The Committee also noted an opinion on action to be taken regarding relations between the European Union and the International Labour Organization, adopted on 17 January 1995 by the Economic and Social Committee of the European Communities. The opinion stresses the need to safeguard the institutional particularities of the ILO and the independence of the social partners throughout the standard-setting process within the Organization and at national level, before and after the standards are adopted. It also mentions the concern that intervention by the European Union in the process of framing and implementing standards might have the effect of inhibiting the dynamism of the ILO's standard-setting activities to which the States of Europe have traditionally made a substantial contribution by their ratifications. The Committee hopes that future developments in this matter will make it possible for EU Member States which so wish to ratify certain ILO Conventions.

Matters relating to human rights

54. Further to the ILO's participation in the World Conference on Human Rights held in Vienna in June 1993, the Office has continued, as part of its regular human rights promotion activities, to respond to the call in the Declaration and Plan of Action adopted by that Conference, for universal ratification of international human rights treaties. The Governing Body decided at its Session of November 1994 to keep this matter on its agenda. A first progress report on the implementation of the Declaration, which contains a contribution from the ILO, has been submitted to the United Nations General Assembly.

55. In the context of strengthening its human rights technical advisory services, the Office has endeavoured to maintain a constructive synergy between the ILO's efforts in this area and the activities carried out by the United Nations through its Centre for Human Rights. The Office attended international seminars on human rights organized by the United Nations in Romania, and cooperated with the above Centre in preparing comments on the draft national legislation. It was also asked to coordinate the section on indigenous peoples of the Guatemala Peace Plan, signed in Oslo in 1994; this mission was carried out by the ILO Office in San José (Costa Rica).

56. A training session on the ILO and human rights organized for NGOs that attend the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities was held on 3 August 1994. It was attended by about 50 NGO representatives. One result of the session was that the NGOs reiterated their wish to contribute more to ILO activities in the area of human rights by being allowed to submit information directly at ILO meetings and to be involved directly in the various procedures for examining complaints.

57. The United Nations General Assembly proclaimed the decade 1994-2004 the "International Decade of the World's Indigenous People", and the Office intends to contribute by organizing its own events and lending its assistance to the activities of the United Nations Centre for Human Rights. The Office convened an inter-organizational meeting in November 1994 to which it invited intergovernmental organizations, development banks and national institutions to discuss coordinated action during the decade.

58. The Committee noted the documents that the Office has produced in preparation for the World Summit for Social Development to be held in March 1995 in Copenhagen (Denmark). The Committee hopes that participants in the Summit will take the ILO's contribution to social justice fully into account.

Questions concerning the application of Conventions

Application of Conventions respecting migrant workers

59. The Committee notes the recent developments concerning the movements of migrants for employment. It notes in particular the increase in the migratory flows within South-East Asia and the persistence of migration to the Middle East. It wishes to draw the attention of governments to the specific situation of a large group of migrants for employment, namely migrant domestic workers. The vulnerability of these workers, who are in their great majority women and young persons, arises principally out of the dual feature of their work, firstly that they are employed in domestic work, for which only a low level of protection is set out in labour legislation, and secondly that by working abroad they are outside the direct legal protection provided by their country of origin. Many migrant domestic workers work under precarious and difficult conditions, which may be characterized as follows:

- atypical working time arrangements (hours of work, weekly rest periods and leave);
- insufficient guarantees covering their wages (observance of minimum rates, the payment of wages);
- the insufficiency or absence of social protection; and
- the lack of information on the exercise, defence and preservation of the above rights (trade union activities, recourse to the courts).

The inherent difficulty of the situation of migrant workers is magnified by the absence of autonomy of domestic workers in respect of their employers. Furthermore, unlawful and clandestine work is widespread in this sector.

60. The international labour Conventions respecting migrant workers, particularly the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), establish minimum standards designed to provide, for all migrant workers who come within the meaning of these instruments, protection no less favourable than that which is applied to national workers in respect of living and working conditions and, in the case of Convention No. 143, equality of opportunity and treatment in these fields. The Committee requests governments to periodically examine the possibility of ratifying these Conventions, which provide both host countries and countries of origin with a number of means through which, in consultation with employers' and workers' organizations, they can control flows of migrants for employment maintaining the respect of human rights.

61. Furthermore, the Committee has examined the conditions under which massive expulsions have been carried out over recent years, which have also affected migrants for employment. It recalls that this issue is covered by certain provisions of ILO instruments, particularly the Migration for Employment Recommendation (Revised), 1949 (No. 86). This instrument recommends member States to refrain from removing migrants for employment who have been regularly admitted to their territory, or the members of their families, on account of their lack of means or the state of the employment market. Furthermore, where an agreement has been concluded between the emigration and immigration countries for the return of migrants for employment, any such agreement should provide that in principle no migrant shall be removed without his consent who has been in the immigration country for more than five years, that the migrant must have been given reasonable notice so as to give him time to dispose of his property and that the necessary arrangements shall have been made to ensure that he and the members of his family are treated in a humane manner. The Committee also recalls the commitment contained in Article 1 of Convention No. 143 to respect the basic human rights of all migrant workers, irrespective of their situation.

Application of the Employment Policy Convention, 1964 (No. 122)

62. At its present session, the Committee has only been able to examine a limited number of reports for the period 1992-94 on the application of the Employment Policy Convention, 1964 (No. 122). It therefore proposes to defer until its next session in December the general comments on the effect given to the Convention that it usually makes as a contribution to the dialogue between the supervisory bodies and member States. In this respect, the Committee notes with particular interest the discussion at the Conference Committee in June 1994. The discussion dealt with aspects such as the relationship between higher productivity and employment, the employment consequences of restrictive macroeconomic policies and structural adjustment, and the role of labour market policy measures in the pursuance of the objective of full, productive and freely chosen employment; in so doing, the frank and well-argued discussion once again bore witness to the contribution of the relevant international standards to the public debate on employment problems. In the Committee's view, this is an encouraging sign of the increasing relevance of its dialogue with all the parties concerned on the policies that should be adopted to ensure the effective pursual of the essential objectives of the Convention.

63. As an extension to its *General Survey* on the 1982 instruments on termination of employment, the Committee would however like to draw attention to a trend towards greater precariousness in employment, which would appear to be becoming more widespread under various forms in different national situations. Adopted within the context of policies emphasizing the need to eliminate certain rigidities on the labour market which are held to be partly responsible for unemployment, employment promotion measures not infrequently have the effect of increasing the numbers of workers who are deprived of adequate protection against termination of employment as a result of their precarious status. The measures taken to stimulate recruitment are leading to an increasing number of exceptions to the principle set out in the labour law of most countries that fixed-term contracts have to be justified by the temporary nature of the work; in contrast with their objective of promoting recruitment, these measures are therefore liable to lead to the exclusion from secure employment of an increasingly large proportion of the active population. Moreover, questions need to be raised concerning the compatibility of the rapid rotation of workers, depending on the enterprise's prospects, with the need for the continuous training of workers so that they can adapt to constantly changing operational requirements. The investment required by both workers and enterprises in training presupposes the existence between them of a sufficiently long-term relationship. It is also indispensable to ensure that the various measures taken to promote the employment of young persons, with the dual objective of encouraging employers to offer them jobs by reducing the marginal cost of their recruitment and enabling young persons to supplement insufficient or inadequate initial training through their first experience of work, are not diverted from their objective. As emphasized by the Committee in individual comments, it is the responsibility of the public authorities to ensure that, in exchange for a lower level of remuneration and more precarious conditions of employment than those set out in the law, the young workers concerned benefit from really effective supplementary training which facilitates their long-term employment prospects.

64. In more general terms, with regard to the important issue of the relationship between labour market flexibility and the promotion of employment, as well as the lively debate to which it gives rise on labour law and the respective responsibilities of the public authorities and the social partners, the Committee welcomes the ILO report *World Employment, 1995*, which emphasizes that the deregulation of the labour market has not had the expected effect on the volume of employment and threatens social cohesion in a manner that is not conducive to economic growth. The position adopted by the Committee, both in its comments on the application of Convention No. 122 and in its *General Survey* on termination of employment, is therefore supported by economic analysis. This position is shared by the Director-General who, in his report to the Conference in 1994, affirmed that the ILO would never dissociate workers' rights from the right to work. The Committee also notes that the report on world employment reaffirms the essential nature of the objective of full employment. These concerns, which are at the heart of the ILO's mandate, should be fully taken into account by the World Summit on Social Development in March 1995, particularly in the Declaration by the Heads of State and Government, which includes the commitment to promote as a basic priority the objective of full, productive and freely chosen employment, in accordance with ILO standards.

Application of the Paid Educational Leave Convention, 1974 (No. 140)

65. Over the past few years there has been a revival of interest in the 1974 instruments on paid educational leave. This interest was illustrated by the selection of these instruments by the Governing Body for the reporting requirements under article 19 of the ILO Constitution in 1990, which drew attention to the role that this type of further training arrangement could play in human resources development policies. The *General Survey* on these reports provided an occasion for reviewing national practices in respect of educational leave and clarifying the requirements of the Convention. The revival of interest has been further confirmed by the ratification of Convention No. 140 over the past three years by countries such as Azerbaijan, Belgium, Brazil and Finland, particularly since there had been no new ratifications of the Convention since 1983. The

Committee will examine the first reports of some of these countries at its next session in December.

66. In individual comments, the Committee had to recall the fundamental obligations deriving from the Convention, as well as the high degree of flexibility that it authorizes. This Convention, which guarantees the rights of workers undergoing training to the maintenance of their contract of employment, adequate financial entitlements and the assimilation of the period of paid educational leave to a period of effective service, also provides for the progressive extension by stages as necessary of paid educational leave to broader educational purposes than just vocational training. The emphasis placed on the continued training of workers in the context of employment policies and in the debate on new forms of work-sharing should contribute to the renewed focus of attention on this Convention.

67. Reference should be made to a particular problem raised by the application of this Convention in the context of the transition to a market economy. Most of the Central and Eastern European States that are now undergoing transition ratified the Convention soon after its adoption and gave it effect by means of measures which were seemingly very generous and appeared to enable almost any worker to undertake or continue studies of any type or level while maintaining entitlement to remuneration and social benefits. The new distribution of responsibility between the public authorities and private initiative, the realities of the market economy and the overriding need for enterprises to be competitive have resulted in criticism of these measures. The supervisory bodies should check that preference is given to the adaptation to the new market economy situation of the arrangements for the granting of paid educational leave provided for in Article 5 of the Convention, rather than their abolition on the grounds that they have become impossible to apply.

III. Technical assistance in the field of standards

A. Direct contacts and cooperation in the field of standards

68. A large number of activities have been undertaken to promote the more widespread understanding, acceptance, ratification and observance of standards.

69. During the year, several regional and subregional seminars and symposia were held on international labour standards: these included a symposium on standards in the Asian and Pacific region (March-April 1994, Thailand), subregional seminars on international labour standards, trade union rights and employment policy (April 1994, Côte d'Ivoire; May 1994, Argentina; August 1994, Thailand; September 1994, Benin; and October 1994, Russian Federation); tripartite seminars on national and international labour standards for English-speaking East, West and North Africa (May 1994, United Republic of Tanzania) and southern African countries (May 1994, Namibia); as well as a tripartite symposium on the problems of women workers in the Arab countries (October 1994, Jordan).

70. Programmes continued to be organized to familiarize national labour administration officials with the obligations of member States and ILO procedures relating to Conventions and Recommendations. A course on international labour standards for government officials from Africa, Asia, the Arab States, Europe and Latin

America was organized in collaboration with the ILO's International Training Centre (May-June 1994, Turin) and was attended by participants from the following countries: Bangladesh, Belize, Burkina Faso, Burundi, Cambodia, Côte d'Ivoire, Croatia, Ghana, Indonesia, Jordan, Malawi, Malaysia, Mauritania, Pakistan, Poland, Russian Federation, Sao Tome and Principe, Solomon Islands, Sudan, Tunisia, Uganda, Uruguay and Viet Nam.

71. Activities for cooperation and the promotion of standards also took the form of participation in seminars, workshops and meetings, and the provision of advisory services on international labour standards in or for the following countries: Argentina, Australia, Bangladesh, Belgium, Benin, Brazil, China, Costa Rica, Côte d'Ivoire, Croatia, Denmark, Egypt, El Salvador, Eritrea, Ethiopia, France, Germany, Guatemala, Hungary, Indonesia, Israel, Italy, Japan, Jordan, Kazakhstan, Mexico, Morocco, Namibia, Norway, Pakistan, Paraguay, Philippines, Poland, Romania, Russian Federation, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Thailand, Tunisia, Uganda, Ukraine, United Kingdom, United States and Zimbabwe.

72. Since the last session of the Committee of Experts, comments and consultations on drafts of labour laws and related legislation in the light of ILO standards have been provided to the following countries: Albania, Bangladesh, Belarus, Belize, Burkina Faso, Cambodia, Côte d'Ivoire, Egypt, Eritrea, Grenada, Kazakhstan, Kyrgyzstan, Mauritania, Mauritius, South Africa and United Kingdom.

B. Standards and multidisciplinary teams

73. Since the last session of the Committee, arrangements for the provision of assistance on standards to member States have developed in the sense that multidisciplinary teams (MDTs), including specialists on international labour standards, have now been established. In March 1995, specialists on standards were in place in the MDTs in Abidjan (Central and West Africa), Bangkok (East Asia), Dakar (North-West Africa), Harare (Southern Africa), Lima (Andean countries), New Delhi (South Asia), Port of Spain (Caribbean) and San José (Central America). Specialists are on the point of being appointed in Beirut (Arab countries) and Santiago (Southern America).

74. The role of the specialists on standards is to provide assistance to the countries covered by their MDTs on all matters that were previously dealt with by the regional advisers on standards, particularly with a view to the fulfilment of the obligations deriving from standards under the Constitution of the ILO. Furthermore, these specialists cooperate closely with the other technical specialists in each team with the objective that standards considerations are taken into account in so far as possible in the technical cooperation activities undertaken by the ILO in each country. The central component of this system is the evaluation of country objectives, which consists of identifying for each country priorities for the concerted action to be undertaken during the months and years to come. One of the means of achieving this in practice is by referring to the relevant international labour standards. Thus, when a State ratifies Conventions, it is establishing priorities and the Office can assist the efforts for resolving any particular difficulties encountered in their implementation, particularly when the Committee has raised such matters in its observations and direct requests.

75. The specialists on standards in each MDT have therefore undertaken, in the context of their normal work, informal advisory missions in many countries. Where specialists on standards have not yet been appointed, whenever possible missions are carried out to the country by specialists on standards from other MDTs or by officials of the International Labour Standards Department in Geneva. The Department also plans to continue its assistance, training and advisory activities in support of the MDTs in the coming months with a view to strengthening their knowledge of international labour standards and the related procedures and continuing the process of the integration of standards into the overall activities of the ILO.

IV. Role of employers' and workers' organizations

76. At each session, the Committee draws the attention of governments to the role that employers' and workers' organizations are called upon to play in the application of Conventions and Recommendations and to the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes with satisfaction that all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the ILO. All governments have indicated the organizations to which they have communicated copies of the information supplied to the ILO on the submission to the competent authorities of the instruments adopted by the Conference and the reports due under article 19 of the Constitution.

77. In accordance with established practice, the ILO sent to the representative organizations of employers and workers a letter concerning the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which the governments were invited to reply in their reports.

Observations made by employers' and workers' organizations

78. Since its last session, the Committee has received 305 observations, 60 of which were communicated by employers' organizations and 245 by workers' organizations. This is the highest number of observations ever received. It shows again the interest of employers' and workers' organizations in the implementation of ILO standards and reflects the constant efforts made by the supervisory bodies and the Office to give interested organizations complete information on their role in this area.

79. The majority of observations received (278) relate to the application of ratified Conventions.[1] Twenty-seven observations relate to the reports provided by governments

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[1] *Argentina*: Confederation of Educational Workers (CTERA) on Conventions Nos. 87, 95; General Confederation of Labour (CGT) on Convention No. 42; Union of Educational Workers of Rio Negro (CTERA-CTA) on Convention No. 95; Union of United Maritime Workers (S.O.M.U.) on Conventions Nos. 1, 9, 14, 22, 26, 32, 52, 53, 81, 95, 98; *Austria*: Branch Committee of the Staff Representation of the Central Labour Inspectorate on Convention No. 81; Federal Chamber of Labour on Conventions Nos. 89, 94, 111; *Bangladesh*: Bangladesh Employers' Association (BEA) on Convention No. 144; *Brazil*: Union of Fishermen of Angra dos Reis on Conventions Nos. 81, 155; Unique Workers' Central (CUT) on Conventions Nos. 95, 107, 117, 122; *Costa Rica*: Association of Customs Officers (ASEPA) on Conventions Nos. 29, 81, 89, 90, 120, 122, 144, 148; Workers' Confederation "RERUM NOVARUM" on Conventions Nos. 1, 26, 95, 131; *Croatia*: Union of Autonomous Trade Unions of Croatia on Convention No. 98; *Denmark*: Danish Confederation of Professional Associations (AC) on Convention No. 98; Danish Union of Journalists on Convention No. 98; *Dominican Republic*: Employers' Confederation of the Dominican Republic on Convention No. 26; *Ecuador*: Ecuadorean Central of Class Organizations (CEDOC) on Conventions Nos. 87, 98, 105, 107, 115, 122, 130, 144, 153; Ecuadorean Confederation of Unitary Class Organizations of Workers (CEDOCUT) on Conventions Nos. 87, 98, 122; Latin American Central of Workers (CLAT) on Convention No. 148; *Finland*: Aland's Shipowners' Association on Conventions Nos. 9, 22; Central Organization of Finnish Trade Unions (SAK) on Conventions Nos. 111, 122, 140; Confederation of Unions for Academic Professionals in Finland (AKAVA) on Conventions Nos. 111, 122, 140; Finnish Seamen's Union on Conventions Nos. 9, 145; Finnish Ships' Officers' Association on Conventions Nos. 9, 145; *France*: French Democratic Confederation of Labour (CFDT) on Conventions Nos. 14, 73, 81, 87, 95, 97, 98, 105, 106, 111, 115, 118, 135, 144; General Confederation of Labour "Force Ouvrière" (CGT-FO) on Conventions Nos. 22, 44, 97, 140; National Federation of Unions of Labour Inspection (F.N.S.I.T.) on Convention No. 81; National Union CGT of Social Affairs (UNAS) on Convention No. 81; *France (French Southern and Antarctic Territories)*: National Federation of Maritime Trade Unions (FNSM) on Conventions Nos. 8, 9, 15, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 98, 108, 111, 133, 134, 146, 147; *Gabon*: Confederation of Gabonese Free Trade Unions (CGSL) on Conventions Nos. 29, 87, 144; *Germany*: German Confederation of Trade Unions (DGB) on Convention No. 102; *Guatemala*: Latin American Central of Workers (CLAT) on Convention No. 119; *India*: All India Organization of Employers (AIOE) on Convention No. 26; Centre of Indian Trade Unions (CITU) on Convention No. 89; Federation of Unorganized Migrant Labour of Goa on Conventions Nos. 26, 81; United Trade Union Centre (UTUC) on Convention No. 26; National Labour Federation of Pakistan on Conventions Nos. 29, 111; *Italy*: Association for Chemical and Allied Concerns with State Participation (ASAP) on Conventions Nos. 100, 118, 148; General Confederation of Commerce and Tourism (CONFCOMMERCIO) on Conventions Nos. 100, 135; General Confederation of Industry (CONFINDUSTRIA) on Convention No. 100; Italian Association of Liner Owners (FEDARLINEA) on Conventions Nos. 8, 22, 23, 55, 71, 92, 145; Italian Confederation of Private Shipowners (CONFITARMA) on Conventions Nos. 8, 22, 23, 55, 71, 145; Italian General Confederation of Labour (CGIL) on Conventions Nos. 42, 148; Italian General Confederation of Labour (CGIL), Italian Confederation of Workers' Unions (CISL), Italian Union of Labour (UIL) on Convention No. 100; National Union of Retired Policemen from Five Corps on Convention No. 102; *Japan*: Japanese Trade Union Confederation (JTUC-RENGO) on Conventions Nos. 87, 147; *Mexico*: Confederation of Workers of Mexico (CTM) on Convention No. 160; Latin American Central of Workers on Convention No. 155; *Morocco*: Moroccan Labour Union (UMT) on Convention No. 105; *New Zealand*: New Zealand Council of Trade Unions (NZCTU) on Conventions Nos. 8, 11, 14, 17, 22, 23, 42, 44, 52, 101, 111, 122, 133, 144, 145; New Zealand

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under article 19 of the Constitution relating to the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982.[2]

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[1] (...continued)

Employers' Federation (NZEF) on Conventions Nos. 14, 17, 42, 111, 122; *Nicaragua*: Dock-Workers' Union of Corinto on Convention No. 9; *Norway*: Confederation of Norwegian Business and Industry (NHO) on Convention No. 42; *Pakistan*: All Pakistan Federation of Trade Unions (APFTU) on Conventions Nos. 18, 22, 29, 81, 87, 96, 98, 111; Pakistan Railway Employees' Union on Convention No. 87; *Peru*: Association of Retired Oil Industry Workers of Metropolitan Area of Lima and Callao on Conventions Nos. 35, 102; Trade Union of Dockworkers of the Major Coastal Navigation of Callao on Conventions Nos. 35, 102; Union of Workers of the Brewery "Backus and Johnston S.A." on Convention No. 1; *Portugal*: General Confederation of Portuguese Workers (CGTP) on Convention No. 98; *Russian Federation*: Trade Union Federation of Primorsky Kraï on Convention No. 95; Union of Workers in Geology, Land Surveying and Cartography of the Russian Federation on Convention No. 95; *Slovenia*: Education, Culture and Science Trade Union of Slovenia on Convention No. 135; *Spain*: General Union of Workers (UGT) on Conventions Nos. 14, 24, 44, 87, 88, 96, 102, 117, 122, 132, 144, 150; Trade Union Federation of Workers' Commissions (CC.OO.) on Conventions Nos. 44, 77, 78, 103, 158; Workers' Labour Union (U.S.O.) — Regional Union of Gijon on Convention No. 155; *Sri Lanka*: Ceylon Workers' Congress on Conventions Nos. 11, 95, 106, 115; Ceylon Mercantile, Industrial and General Workers' Union (CMU) on Convention No. 98; *Suriname*: Suriname Trade and Industry Association on Conventions Nos. 94, 144, 150; *Sweden*: Swedish Association of Local Authorities on Convention No. 100; Swedish Confederation of Professional Employees (TCO) on Convention No. 161; Swedish Employers' Confederation (SAF) on Conventions Nos. 161 and 167; Federation of Swedish County Councils on Convention No. 100; Swedish Trade Union Confederation (LO) on Conventions Nos. 155, 161, 167; *Turkey*: Confederation of Turkish Trade Unions (TURK-IS) on Conventions Nos. 2, 11, 14, 26, 58, 77, 81, 87, 88, 94, 95, 98, 100, 105, 111, 115, 118, 122, 123; Turkish Confederation of Employers' Associations (TISK) on Conventions Nos. 14, 58, 77, 94, 115; Chamber of Maritime Trade, Union of Turkish Shipowner Employers, Union of Turkish Seafarers and Association of Turkish Shipowners on Convention No. 58; *Ukraine*: Republican Council of the Trade Union of Workers of the Coalmining Industry of Ukraine on Conventions Nos. 52, 95; *United Kingdom*: Confederation of British Industry (C.B.I.) on Convention No. 144; Trades Union Congress (TUC) on Conventions Nos. 24, 44, 87, 92, 97, 99, 101, 102, 122, 135, 140, 144, 147, 150, 160; *United Kingdom (St. Helena)*: Trades Union Congress (TUC) on Convention No. 87; *United Kingdom (Hong Kong)*: Trades Union Congress (TUC) on Conventions Nos. 98, 151; *Venezuela*: Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) on Conventions Nos. 87, 102, 155, 156; *Zimbabwe*: Zimbabwe Council of Trade Unions (Z.C.T.U.) on Conventions Nos. 14, 45, 144.

[2] *Austria*: the Federal Chamber of Labour; *Barbados*: Barbados Employers' Confederation, Barbados Workers' Union; *Brazil*: "Gaucha" Association of Labour Inspectors (AGITRA); *Dominica*: The Dominica Employers' Federation, Dominica Association of Teachers; *Estonia*: Confederation of Estonian Industry, Association of Trade Unions; *Finland*: Central Organization of Finnish Trade Unions (SAK), Confederation of Unions for Academic Professionals in Finland (AKAVA); *Iraq*: Federation of Iraqi Industry, General Federation of Workers' Trade Unions; *Kenya*: Federation of Kenya Employers; *Republic of Korea*: Federation of Korean Trade Unions (FKTU); *Mexico*: Mexican Confederation of Chambers of Industry (CONCAMIN), Confederation of Mexican Workers (CTM); *New Zealand*: New Zealand Employers' Federation, New Zealand Council of Trade Unions (NZCTU); *Portugal*: General Confederation of Portuguese Workers (CGTP-IN); *Slovakia*: Federation of Employers' Unions and Associations of the Slovak Republic, Confederation of Trade Unions; *Sri Lanka*: Employers' Federation of Ceylon, Lanka Jathika

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80. The Committee notes that, of the observations received this year, 148 were transmitted directly to the International Labour Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 157 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

81. The Committee also examined a number of other observations by employers' and workers' organizations, consideration of which had been postponed from the last session because the observations of the organizations or the replies of the governments had arrived just before or just after the session. It has had to postpone the examination of a number of observations to its next session, when they were received too close to or even during the Committee's present session to allow sufficient time for the governments concerned to make comments and for the Committee to consider the matters involved.

82. The Committee notes that in most cases the organizations of employers and workers endeavoured to gather and present precise facts on the application in practice of ratified Conventions. It notes that the matters dealt with in these observations have touched on a very wide range of Conventions relating, in particular, to the following subjects: protection of the right to organize and the right to collective bargaining, discrimination, forced labour, minimum wage fixing, employment policy, labour inspection, wage payment, tripartite consultations relating to international labour standards, maritime labour. The second part of this report contains most of the comments made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to the governments.

83. The Committee notes lastly that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has now received 72 ratifications. Thus, the number of ratifications has more than doubled since the General Survey on the Convention in 1982,[3] which noted favourable prospects in this respect. The Committee hopes that many other countries will be able to ratify it, all the more since some have recently adopted provisions to establish tripartite bodies for ILO activities, with reference to the 1976 instruments.

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[2] (...continued)
Estate Workers' Union; *Togo*: National Confederation of Workers of Togo; *Turkey*: the Turkish Confederation of Employers' Associations (TISK), the Confederation of Turkish Trade Unions (TURK-IS); *United Kingdom*: Trades Union Congress (TUC).

[3] International Labour Conference, 68th Session, Geneva, 1982, Report III (Part 4(B)), para. 202.

V. Reports on ratified Conventions
(articles 22 and 35 of the Constitution)

Supply of reports

84. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions which have been ratified by member States or which have been declared applicable to non-metropolitan territories.

85. In accordance with the procedure for reporting that has been in force since 1977, detailed reports from all ratifying States, covering the period ending 30 June 1994, were due to be examined this year in respect of 43 Conventions.[4] In addition, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria for more frequent reporting approved by the Governing Body and set out in paragraph 38 of the Committee's 1977 report.

86. The new arrangements for reporting on ratified Conventions will be put into effect during the course of 1995.[5]

Reports requested and received

87. A total of 2,290 detailed reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,573 of these reports had been received by the Office. This figure corresponds to 68 per cent of the reports requested, compared with 68.7 per cent last year. The Committee regrets that, as indicated in paragraph 101 below, a number of reports received are incomplete and do not enable it to reach conclusions regarding the application of the Conventions concerned. A table showing reports received and not received, classified by country and by Convention, is to be found in Part II (section I, Appendix I). Another table (section I, Appendix II) shows, for each year in which the Committee has met since 1933, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee, and by the date of the session of the International Labour Conference.

88. In addition, 476 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (articles 22 and 35 of the Constitution). Of these, 352 reports, 73.9 per cent, had been received by the end of the Committee's session, in comparison with 62.7 per cent in 1994. A list of the reports received and not received, classified by territory and by Convention, is to be found appended to section II of Part Two of this report.

89. Furthermore, 16 governments also supplied general reports on Conventions for which detailed reports were not due for the period under review: Belgium, Belize, Bolivia, Brazil, Croatia, Cyprus, Ireland, New Zealand, Panama, Poland, Saudi Arabia, Singapore, Slovakia, Suriname, Switzerland, Turkey.

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[4] Conventions Nos. 8, 11, 14, 21, 22, 23, 24, 25, 44, 52, 55, 56, 71, 77, 78, 82, 84, 87, 94, 95, 97, 101, 105, 106, 107, 111, 114, 115, 117, 122, 124, 130, 132, 135, 140, 141, 143, 144, 145, 150, 167, 168, 169.

[5] ILO: *Report of the Committee on Legal Issues and International Labour Standards*, GB.258/6/19, 258th Session, November 1993.

90. In those cases in which the reports were not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination, and where this material was not otherwise available, the Office, as requested by the Committee, wrote to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

Compliance with reporting obligations

91. Most of the governments from which reports were due on the application of ratified Conventions have supplied all or most of the reports requested, as can be seen from Appendix I, Part II, section I. However, 43 governments have not complied with their obligation to supply reports on ratified Conventions. Thus, all or the majority of the reports due this year have not been received from the following countries: Algeria, Antigua and Barbuda, Bahamas, Bosnia Herzegovina, Bulgaria, Cameroon, Cape Verde, Comoros, Djibouti, El Salvador, Ghana, Guatemala, Jamaica, Kuwait, Kyrgyzstan, Latvia, Lesotho, Liberia, Luxembourg, Madagascar, Rwanda, Tajikistan, Trinidad and Tobago, Uganda, Yemen. No reports have been received for the past two or more years from the following countries: Albania, Burundi, Chad, Dominica, Equatorial Guinea, Gabon, Guinea Bissau, Haiti, Libyan Arab Jamahiriya, Lithuania, Mozambique, Nepal, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Solomon Islands, Somalia, Zaire.

92. The Committee urges the governments of these countries, and also of those which have sent only some of the reports due, to make every effort to supply the reports requested on ratified Conventions. Where no reports have been sent for a number of years, it is likely that particular problems of an administrative or technical nature are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it may be that in cases of this kind assistance from the Office, in particular with the help of members of multidisciplinary advisory teams who are specialists on international labour standards, could enable the government to overcome its difficulties.

Late reports

93. The Committee is once again bound to emphasize the importance of communicating reports in due time. Once again this year, reports were requested on ratified Conventions by 15 October 1994 at the latest. Due consideration is given, when fixing this date, to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation, etc. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

94. The Committee observes that the great majority of reports are thus received between the time-limit fixed and the date on which the Committee meets: by 15 October 1994, the proportion of reports received was only 16.4 per cent. The Committee is very concerned at this percentage, which is very low, and notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time.

It has thus had to examine a number of reports at its present session held over from 1994.

95. The Committee must point out yet again that it is extremely concerned at this state of affairs. It trusts that, in the context of the rescheduling of the regular supervisory procedures which comes into force in 1995, governments will in future endeavour to observe the time-limits laid down for the sending of their reports so that it can carry out its supervisory function adequately.

96. Furthermore, the Committee once again notes that for several years a number of countries have been sending the reports due on ratified Conventions during the period between the end of the Committee's work and the beginning of the International Labour Conference, or even during the Conference.[6] The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome.

Supply of first reports

97. A total of 42 of the 78 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following States: since 1992 from Guinea (Convention No. 133), Liberia (Convention No. 133), Nigeria (Convention No. 133); since 1993: Luxembourg (Conventions Nos. 53, 68, 69, 73, 74, 92, 108, 147 and 166) and Yemen (Convention No. 159).

98. The Committee recalls that particular importance attaches to first reports on the basis of which it makes its initial assessment of the observance of ratified Conventions. It therefore requests the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

99. Governments are requested to reply in their reports to the observations and direct requests of the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 40 governments to which such letters were sent, only five have provided the information requested.

100. The Committee notes with concern that there are still many cases of failure to reply to its comments; either:

(a) out of all the reports requested from governments, no report or reply has been received; or

(b) the reports received contained no reply to most of the Committee's comments (observations and/or direct requests) and/or did not reply to the letters sent by the Office.

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[6] For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, IC and IIB.

101. In all there were 337 such cases,[7] as compared to 354 last year and 318 the previous year. The Committee is concerned by the number of these cases, which is still very high. It is bound to repeat the observations or direct requests already made on the Conventions in question.

102. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee, and the Committee of Experts cannot overemphasize the special importance of ensuring the dispatch of the reports and replies to its comments on time. The Committee hopes that the introduction of the new procedures for the requesting of reports, and the assistance of the multidisciplinary teams, will result in a substantial improvement in this situation in the near future.

Examination of reports

103. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, the Committee has followed its usual practice of assigning to each of its members the initial responsibility for a group of Conventions. Reports received early enough are sent to the members concerned in advance of the Committee's session. The members submit their preliminary conclusions on the instruments for which they are responsible to all their colleagues for their examination. These conclusions are then presented to the Committee in plenary sitting by their respective authors for discussion and approval. Decisions on comments are adopted by consensus, without prejudice to experts who wish to put forward different opinions, as was the case in the past.

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[7] *Algeria* (Conventions Nos. 13, 24, 44, 56, 77, 78, 87, 94, 95, 105, 111, 122); *Angola* (Conventions Nos. 105, 107, 111); *Antigua and Barbuda* (Conventions Nos. 87, 111); *Bulgaria* (Conventions Nos. 9, 34, 52, 106, 111); *Burundi* (Conventions Nos. 11, 29, 81, 94, 105); *Cameroon* (Conventions Nos. 78, 87, 94, 105, 111, 122, 132); *Cape Verde* (Convention No. 111); *Central African Republic* (Conventions Nos. 13, 19, 29, 41, 52, 87, 94, 98, 100, 105, 111, 117, 118); *Chad* (Conventions Nos. 6, 29, 52, 81, 87, 95, 98, 100, 105, 111); *Comoros* (Conventions Nos. 14, 52, 77, 78, 95, 101, 105, 122); *Cyprus* (Conventions Nos. 97, 100, 105, 111, 114, 122, 143); *Denmark*: Greenland (Conventions Nos. 14, 106); *Djibouti* (Conventions Nos. 24, 29, 55, 88, 94, 95, 100, 106, 115, 120, 122); *Dominica* (Conventions Nos. 8, 16, 26, 29, 87, 95, 100, 105, 111, 138); *El Salvador* (Conventions Nos. 105, 107); *Equatorial Guinea* (Convention No. 100); *Gabon* (Conventions Nos. 29, 81, 87, 95, 98, 100, 105, 124, 144, 154, 158); *Ghana* (Conventions Nos. 22, 81, 87, 89, 94, 98, 100, 105, 111, 115, 117, 148, 149); *Guatemala* (Conventions Nos. 11, 13, 29, 50, 64, 87, 94, 95, 103, 105, 111, 117, 122, 131, 138, 141, 144, 161, 162); *Guinea Bissau* (Conventions Nos. 17, 18, 19, 26, 29, 45, 74, 81, 88, 91, 98, 100, 105, 108, 111); *Haiti* (Conventions Nos. 14, 24, 25, 29, 42, 81, 87, 98, 100, 106, 111); *Jamaica* (Conventions Nos. 8, 81, 87, 94, 98, 100, 105, 111, 117, 122); *Kuwait* (Conventions Nos. 87, 105, 106, 117); *Lesotho* (Convention No. 5); *Liberia* (Conventions Nos. 29, 55, 87, 98, 105, 114); *Libyan Arab Jamahiriya* (Conventions Nos. 29, 52, 88, 95, 98, 100, 105, 111, 118, 121, 122, 130, 131); *Madagascar* (Conventions Nos. 29, 87, 95, 111, 119, 120, 122, 124, 127, 132); *Mongolia* (Conventions Nos. 111, 122); *Mozambique* (Conventions Nos. 18, 81, 88, 100, 105, 111); *Nepal* (Conventions Nos. 100, 111, 131); *Panama* (Conventions Nos. 22, 52, 68, 73, 87, 89, 92, 94, 107, 111, 117, 122, 126); *Papua New Guinea* (Conventions Nos. 8, 29, 98, 105, 122); *Rwanda* (Conventions Nos. 11, 87, 94, 105, 111, 135); *Saint Lucia* (Conventions Nos. 5, 17, 19, 87, 94, 95, 97, 98, 100, 111); *Sao Tome and Principe* (Conventions Nos. 17, 18, 81, 88, 100, 111); *Solomon Islands* (Conventions Nos. 8, 14, 26, 29, 81, 95); *Somalia* (Conventions Nos. 94, 95, 111); *Trinidad and Tobago* (Conventions Nos. 87, 98, 105, 111); *Uganda* (Conventions Nos. 29, 94, 95, 105, 124, 143); *Yemen* (Conventions Nos. 95, 98, 111, 132, 135); *Zaire* (Conventions Nos. 29, 81, 88, 94, 95, 98, 100, 102, 117, 121, 150, 158).

Observations and direct requests

104. In the majority of cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the Report of the Committee, or "direct requests", which are not published in the report, but are communicated directly to the governments concerned.

105. As previously, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the Government to supply a detailed report earlier than would otherwise have been the case. Under the system of spacing out reports, which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the Government to supply full particulars to the Conference at its next session in June 1995.

106. The observations of the Committee appear in Part Two (sections I and II) of this report, together with a list under each Convention of any direct requests. An index of all observations and direct requests, classified by country, is provided at the beginning of this report.

Cases of progress

107. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to express its satisfaction at certain measures taken by governments to make the necessary changes in their country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 36 instances in which measures of this kind have been taken in 22 States and three non-metropolitan territories. The full list is as follows:

Cases of progress	*Conventions Nos.*
Algeria	127
Australia	87, 111
Brazil	12
Burkina Faso	111
Colombia	29, 98, 111
Cuba	111
Dominican Republic	87
Finland	87, 115
France	148
Germany	87
Ghana	111
Guyana	95, 100
Liberia	23, 108
Luxembourg	87
Mexico	169
Philippines	17, 95, 111
Portugal	78, 95, 143
Spain	100, 140
Togo	111
Tunisia	87
Venezuela	95
Zambia	136
Non-metropolitan territories	
Netherlands	
Netherlands Antilles	58
United Kingdom	
British Virgin Islands	8
Falkland Islands (Malvinas)	8

108. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following its comments has risen to 2,070 since the Committee began listing them in its reports in 1964. In addition, there have been many cases in which the Committee has been able to note with interest various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

109. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee has again noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

Practical application

110. As in previous years, the Committee has been concerned with assessing, on the basis of the information available, the extent to which national legislation giving effect to ratified Conventions is applied in practice. A number of questions designed to elicit information on this point are included in the report forms approved by the Governing Body for the Conventions, and the replies of governments to these questions constitute an appreciable, though uneven, source of information on practical application available to the Committee. The Committee has also taken into account other authoritative sources of information. These consist of the annual reports of labour inspection services, statistical yearbooks published in the States or by the ILO, observations of employers' or workers' organizations, compilations of judicial or administrative decisions, reports on direct contacts, reports on technical cooperation projects and missions, and other official publications such as manuals, studies and economic and social development plans.

111. The Committee notes with interest that this year some 62.5 per cent of the reports supplied on Conventions for which information on practical application was specifically requested contained such data. Although lower than in 1994, this percentage is higher than in 1992 and 1993. The Committee nonetheless reiterates its appeal to governments to make every effort to include the information requested in their reports.

112. The following countries have provided information on practical application in more than half the reports concerned: Algeria, Australia, Austria, Belgium, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Finland, France, Germany, India, Ireland, Iceland, Italy, Japan, Kenya, Liberia, Morocco, New Zealand, Norway, Pakistan, Panama, Portugal, Russian Federation, San Marino, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela, Yemen and Zambia.

113. The Committee wishes particularly to thank governments that have given information on practical application in their reports, as this information has greatly helped it in assessing more accurately the extent to which ratified Conventions are actually applied in these countries.

114. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that, again this year, the majority of the countries in question are developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office, particularly when provided by the MDTs, could assist in overcoming the difficulties in question.

115. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 53 reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

116. For many years, the Committee has been noting that provisions concerning sanctions to secure observance of the measures in pursuance of Conventions to ensure their application are often inadequate because the sanctions laid down do not have a sufficiently dissuasive effect, particularly where violations of basic human rights are concerned, which should, in appropriate cases, be followed by measures of compensation. It once again draws attention to the importance of establishing effective sanctions and of adapting monetary penalties, particularly in countries with high rates of inflation, in such a way that they exert an effective preventive influence against acts contrary to the guarantees laid down by international labour Conventions. In this respect, the Committee notes with interest the new Penal Code in France, which came into force on 1 March 1994, which reinforces penalties for acts prejudicial to health and safety in the field of occupational injuries. Sanctions for involuntary harm to life and personal safety can be aggravated in the event of a deliberate failure to comply with an obligation relating to safety or prudence imposed by the law or regulations and can result in liability to imprisonment for up to five years or a fine of FF500,000 (about $90,000). The Committee again requests governments to indicate in their reports the measures taken to examine the need to adapt monetary penalties from time to time in the light of inflation or to determine the amount of such penalties in such a way as to take account of currency fluctuations.

VI. Submission of Conventions and Recommendations to the competent authorities

(article 19, paragraphs 5, 6 and 7, of the Constitution)

117. In accordance with its terms of reference, the Committee this year examined the following information[8] supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organization:

(a) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months, as provided for in the Constitution, the following instruments adopted at the 80th Session of the Conference (1993): the Prevention of Major Industrial Accidents Convention (No. 174) and Recommendation (No. 181), 1993;

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[8] ILC: *Summary of information on the submission to the competent authorities of Conventions and Recommendations adopted by the International Labour Conference*, Report III (Part 3), 81st Session, Geneva, 1994.

(b) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st (1948) to its 79th (1992) Sessions (Conventions Nos. 87 to 173 and Recommendations Nos. 83 to 180);

(c) replies to the observations and direct requests made by the Committee in 1994.

80th Session

118. The Committee notes with interest that the governments of the following member States have indicated that they have submitted to the authorities considered by them to be competent the instruments adopted by the Conference at its 80th Session: Australia, Barbados, Belarus, Canada, Cape Verde, China, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Grenada, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Israel, Japan, Republic of Korea, Latvia, Luxembourg, Malta, Mexico, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Peru, Poland, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, Sweden, Turkey, Ukraine, United Kingdom, United States and Viet Nam.

31st to 79th Sessions

119. The Committee notes with interest that considerable efforts have been made by several governments to submit instruments adopted by the Conference since its 31st Session to the competent authorities, particularly in the following cases: Belize (69th to 76th Sessions), Benin (75th, 76th and 77th Sessions), Israel (78th and 79th Sessions) and Swaziland (74th, 75th and 76th Sessions (Convention No. 170 and Recommendation No. 177)).

120. The table in Appendix I to section III of Part Two of the report of the Committee shows the position of each member State as it emerges from the information supplied by the governments, with regard to the discharge of the obligation to submit Conventions and Recommendations adopted by the Conference to the competent authorities. Appendix II shows the overall position in this respect for the instruments adopted from the 31st to the 80th Sessions of the Conference.

General aspects

121. The Committee notes with concern that many countries are late — sometimes very late — in submitting to the competent authorities the instruments adopted by the Conference. In other cases, submission does not appear to have been accompanied by proposals on the action to be taken concerning the instruments being considered.

122. The Committee wishes to emphasize that the submission to the competent authorities of the instruments adopted by the Conference is a fundamental obligation which constitutes the indispensable first step in implementing international labour standards. In order that national authorities may be kept up to date on the standards adopted at the international level, which may require action in each State so as to give effect to them at the national level, submission should be made as early as possible and in any case within the time-limits set by article 19 of the ILO Constitution. Governments, however, remain entirely free to propose any action which they may judge appropriate in respect of Conventions and Recommendations. The principal aim of the submission is to encourage a rapid and responsible decision by each member State on the Conventions and Recommendations adopted by the Conference.

Comments of the Committee and replies from governments

123. In section III of Part Two of this report, the Committee makes individual observations on the points that it considers should be brought to the special attention of governments. In two of these observations, the Committee has expressed its satisfaction at the measures taken (in Lebanon and Peru) for the submission of instruments to the competent authorities. In addition, requests with a view to obtaining supplementary information on other points have also been addressed directly to a number of countries, which are listed at the end of section III.

124. The Committee once again regrets to note that a number of governments have again failed to provide replies to its comments, even after reminders have been sent by the Office in accordance with the request made to it by the Committee (see Part Two, section III of this report). The Committee again expresses the hope that governments will endeavour in future to supply all the required information and documents.

125. The Committee wishes once more to point out the importance of the communication by governments of the information and documents called for in points I and II of the questionnaire in the Memorandum adopted by the Governing Body. Some governments do not communicate the information and documents in question. The Committee trusts that the governments concerned will take suitable measures to comply with the Memorandum on submission to the competent authorities.

Special problems

126. The Committee is bound to note with regret that no information has been supplied by the following 25 governments showing that the Conventions and Recommendations adopted by the Conference during at least the last seven sessions (from the 72nd to the 79th Sessions)[9] have in fact been submitted to the competent authorities: Algeria, Bangladesh, Central African Republic, Congo, Costa Rica, Djibouti,

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[9] The Conference did not adopt either a Convention or a Recommendation at its 73rd (June 1987) Session.

Ecuador, El Salvador, Guinea, Haiti, Jamaica, Kenya, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malawi, Mozambique, Papua New Guinea, Paraguay, Saint Lucia, Seychelles, Solomon Islands, United Republic of Tanzania, Trinidad and Tobago and Zaire. The fact that so many countries have accumulated a long backlog in this context is a cause of deep concern to the Committee. Indeed, there is a danger that certain countries may find it difficult, if not impossible, to bring themselves up to date. What is more, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as the Conference adopts them, which defeats the real purpose of the obligation to submit explained in paragraph 122 above.

127. In this context, the Committee would like to point out once again that the obligation of submission does not imply that governments must ratify the Conventions or accept the Recommendations in question. The Committee therefore expresses the firm hope that the governments concerned will promptly undertake to submit the instruments adopted at the sessions indicated and that it will be able to note the progress made in this respect in its next report. The Committee finally recalls that governments have the possibility of asking the International Labour Office for the technical assistance which it is able to provide, particularly through the multidisciplinary teams, to endeavour to solve this type of problem.

Submission of certain instruments to the appropriate authorities of the European Union

128. Over the past year, three Member States of the European Union (Belgium, France and Luxembourg) stated that they had submitted the Prevention of Major Industrial Accidents Convention (No. 174) and Recommendation (No. 181), 1993, to the appropriate authorities of the European Union. Germany, which is also a Member State of the European Union, stated that it had submitted the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985, and the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), to the competent authorities of the European Union. In their reports, the above governments stated that the consultations provided for in article 23, paragraph 2, of the ILO Constitution and by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), will be pursued at the national level.

129. The Committee trusts that member States, when they participate in the work of the bodies of the European Union responsible for deciding on the ratification of a Convention, will continue to work for the attainment of the objectives of the ILO by endeavouring in good faith to envisage the ratification of international labour Conventions whenever conditions make this possible.

VII. Instruments chosen for reports under article 19 of the Constitution

130. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19, paragraphs 5 and 7, of the ILO Constitution on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982.

131. A total of 315 reports were requested and 202 received.[10] This represents 64.1 per cent of the reports requested.

132. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from: Afghanistan, Albania, Antigua and Barbuda, El Salvador, Haiti, Liberia, Libyan Arab Jamahiriya, Mongolia, Nicaragua, Papua New Guinea, Paraguay, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Venezuela and Yemen.

133. The Committee can only urge governments once again to provide the reports requested so that its General Surveys can be as comprehensive as possible.

General Survey

134. Part Three of this report (issued separately as Report III (Part 4B)) contains the General Survey of the Committee on questions covered by Convention No. 158 and Recommendation No. 166. The survey, in accordance with the practice followed in previous years, has been prepared on the basis of a preliminary examination by a working party comprising five persons appointed by the Committee from among its members.

* * *

135. Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the ILO, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly complex task in a limited period of time.

Geneva, 3 March 1995.

(Signed) Sir William Douglas,
Chairperson.

E. Razafindralambo,
Reporter.

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[10] ILC, 82nd Session, Geneva, 1995: *Summary of reports (articles 19, 22 and 35 of the Constitution)*, Report III (Parts 1, 2 and 3).

PART TWO

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

I. Observations concerning annual reports on ratified Conventions

(article 22 of the Constitution)

A. GENERAL OBSERVATIONS

Albania

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Burundi

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Chad

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Dominica

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Equatorial Guinea

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Gabon

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Guinea

The Committee notes that the first report, due since 1992, on Convention No. 133 has not been received. It trusts that the Government will in future discharge its obligation to supply the report on the application of this Convention.

Guinea-Bissau

The Committee notes with regret that for the fifth year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Liberia

The Committee notes that some reports due, including the first report, due since 1992, on Convention No. 133, have not been received. It hopes that the development of the national situation will permit the Government to discharge in future its obligation to supply reports on the application of ratified Conventions. In expectation of this, the Committee comments on the application of certain ratified Conventions.

Libyan Arab Jamahiriya

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Lithuania

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Luxembourg

The Committee notes that the first reports due since 1993 on Conventions Nos. 53, 68, 69, 73, 74, 92, 108, 147 and 166 have not been received. It trusts that the Government will in future discharge its obligation to supply the reports on the application of these Conventions.

Mozambique

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Nepal

The Committee notes with regret that for the third year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Nigeria

The Committee notes that the first report due since 1992 on Convention No. 133 has not been received. It trusts that the Government will in future discharge its obligation to supply the report on the application of this Convention.

Papua New Guinea

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Saint Lucia

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Sao Tome and Principe

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Solomon Islands

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions.

Somalia

The Committee notes that the reports due have not been received. The Committee hopes that appropriate measures will be taken to ensure the application of ratified Conventions as soon as circumstances permit.

Yemen

The Committee notes that the first report, due since 1993, on Convention No. 159 has not been received. It trusts that the Government will in future discharge its obligation to supply the report on the application of this Convention.

Yugoslavia

In the light of decisions adopted by competent bodies of the United Nations considering that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically ensure the continuity of membership of the former Federal Socialist Republic of Yugoslavia, as well as the inferences drawn from this by the ILO Governing Body, the Committee considers it preferable, in order not to prejudge this question, not to proceed to examine the application of the ratified Conventions.

Zaire

The Committee notes with regret that for the second year in succession the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions. The Committee also recalls that the Government has the obligation under article 23, paragraph 2, of the Constitution to supply copies of such reports to organizations of employers and workers.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Angola, Antigua and Barbuda, Azerbaijan, Bahamas, Bangladesh, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Cameroon, Cape Verde, Central African Republic, China, Comoros, Côte d'Ivoire, Djibouti, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Guatemala, Guinea, Haiti, Honduras, Iraq, Jamaica, Jordan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Luxembourg, Madagascar, Malta, Mauritania, Nicaragua, Niger, Rwanda, Slovakia, Tajikistan, United Republic of Tanzania, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, Yemen.*

B. INDIVIDUAL OBSERVATIONS

Convention No. 1: Hours of Work (Industry), 1919

Costa Rica (ratification: 1992)

The Committee takes note of the information supplied by the "Confederación de Trabajadores Rerum Novarum" in April 1994 where it referred to the absence of regulations on the hours of work to be applied specially, inter alia, to transport by highway, cargo in general, and passengers. The Government has not submitted its comments on the said information.

In its previous direct requests, the Committee referred to the possible differences between certain provisions of the Labour Code and the Convention. In previous reports, the Government manifested that under section 136 of the Labour Code, the workers and employers can agree to fix the hours of work up to ten hours a day as long as the limit of 48 hours of work per week is respected, which is contrary to *Article 2 of the Convention*, which provides that only in certain circumstances can hours of work be exceeded by one hour per day. The Government also assures that it is applying *Article 5* of the Convention, but this Article refers only to "in exceptional cases where it is recognized that the provisions of Article 2 cannot be applied ...". This does not seem to be the case under section 136 of the Labour Code. Furthermore, in cases referred to in Article 5 of the Convention, but only in such cases, the Convention provides that agreements between workers' and employers' organizations, if they are given the force of regulations by the Government, could provide for the daily limit of work over a longer period of time. However, regarding the information transmitted by the "Confederación de Trabajadores Rerum Novarum", it seems that the agreements of workers and employers or the pertinent regulations do not exist.

The Committee asks the Government to give all necessary information on that matter.

On the other hand, *Article 6* of the Convention establishes the obligation of determining by regulations the possible exceptions, permanent or temporary, in certain cases and under certain conditions. The Committee recalls that these exceptions have to be maintained within reasonable limits. The Committee asks the Government to provide all available information on the application of these provisions.

More generally, the Committee would be grateful if the Government would indicate the measures taken to ensure full conformity between the legislation and the provisions of the Convention.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

Peru (ratification: 1945)

1. With reference to its previous comments, the Committee notes Legislative Decree No. 26136 of 1992, incorporating the provisions of the Convention into the national legislation. The Committee would be grateful if in its next report the Government would provide information, as it stated previously in its report dated 18 May 1993, on the practical application of this Legislative Decree provision (*Part VI of the report form*).

2. The Committee also notes a communication from the trade union of the employees of the Brewery Bakus and Johnston Ltd., referring to matters connected with the application of the Convention, which was received in the ILO in January 1995 and transmitted to the Government in February 1995. The Committee trusts that the Government will make any comments it deems appropriate on the above communication in its report.

Convention No. 2: Unemployment, 1919

South Africa (ratification: 1924)

The Committee notes the information provided by the Government in its report received in December 1993, as well as the recent political, social and economic developments in South Africa reflected in the Governing Body document GB.261/LILS/9/7 "Developments in South Africa and implementation of the ILO plan of action in South Africa" adopted by its 261st Session in November 1994. It notes, in particular, from the Government's report that Black Administration (Development) Boards were disbanded and the placement services were incorporated with those of the Department of Manpower which renders placement service free of charge throughout the country to all workseekers of all population groups, and residential rights no longer restrict workseekers from having access to such services.

Article 1 of the Convention. With reference to its previous comments, the Committee notes from the Government's report that the Central Statistical Service made arrangements to undertake a survey, once every year in October, to compile statistics concerning unemployment for the whole of the national territory. The Committee hopes that the Government will be able to communicate such statistics with its next report, as well as any other information concerning unemployment and measures taken or contemplated to combat it, and that such information will cover the whole of the national territory.

Article 2, paragraph 1. The Government states in its report that there are no advisory employment boards in the country. The Committee recalls in this regard that this Article of the Convention provides for the establishment of committees which shall include representatives of employers and workers to advise on matters concerning the carrying on of free public employment agencies. It hopes that the Government will take appropriate measures to establish such committees, in conformity with this Article, and asks the Government to supply information on any progress made in this connection. The Government is requested to indicate, in particular, how such committees are constituted and appointed and what method is adopted for the choice of the employers' and workers' representatives, as required by the report form.

Article 2, paragraph 2. The Committee notes the Government's statement to the effect that no steps have been taken to coordinate the operations of private employment agencies with those of the placement services of the Department of Manpower. The Committee would like to draw the Government's attention to the provision of this

Article, which reads as follows: "Where both public and private free employment agencies exist, steps shall be taken to coordinate the operations of such agencies on a national scale". The Committee would be grateful if the Government would indicate, in its next report, whether free private employment agencies exist, and if so, what steps are taken or envisaged to coordinate their operations with those of the public placement services, as required by this Article.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Guyana, Turkey*.

Convention No. 3: Maternity Protection, 1919

A request regarding certain points is being addressed directly to *Cameroon*.

Convention No. 4: Night Work (Women), 1919

Nicaragua (ratification: 1934)

The Committee notes the information supplied by the Government in its report.

In its previous comments the Committee noted that the national legislation contains no provision banning night work by women, in accordance with *Article 3 of the Convention*. The Committee observes that there has been no progress in this respect although a new Labour Code has been adopted.

The Committee notes that, according to the Government's report, the women's organizations consulted and women deputies in the plenary debates on the new Labour Code at the National Assembly, disagreed with prohibiting night work by women on the grounds that it places restrictions on their integration in the world of labour. The women deputies were of the view that labour legislation should treat women in the same way as men and that only maternity protection should be regulated. The Committee also notes the Government's statement that it is necessary to take account of the social and economic situation of peoples among which the woman, in a high percentage of cases, is the head of the family and the only economically active person in the family group and, accordingly, the only source of income.

The Committee asks the Government to indicate the measures taken to ensure that national laws are consistent with the commitments made by ratifying the Convention.

[The Government is asked to report in detail in 1996.]

Convention No. 5: Minimum Age (Industry), 1919

Bolivia (ratification: 1954)

Regarding section 58 of the General Labour Act, which authorizes the employment of children under 14 years of age as apprentices, the Committee has been asking the Government to bring it into conformity with the Convention, which allows exceptions to the minimum age for admission to employment or work only for industrial undertakings in which only members of the same family are employed *(Article 2 of the Convention)* or for work done by children in technical schools, provided that such work is approved and supervised by public authority *(Article 3)*.

The Committee notes the Government's reference to the draft General Labour Act, prepared with ILO assistance, in which the provision concerning the minimum age for conclusion of the employment contract is set at 14 years, without exception for apprentices.

Recalling that it has been commenting on this matter for many years, the Committee can only hope that the draft will soon be adopted as the new Act, and it asks the Government to supply information on all progress made.

Lesotho (ratification: 1966)

In its previous observation, the Committee noted the Government's earlier indication that the Inspectorate Division of the Labour Department was reluctant to implement the existing provisions of the law relating to minimum age *(Article 2 of the Convention)*. It also noted that the obligation, under section 128 of the Labour Code Order No. 24 of 1992, for the employer to keep registers of all persons under 16 years of age is rarely, if ever, complied with *(Article 4)*.

The Committee notes the supplementary information supplied by the Government representative to the Conference Committee in 1994 and the subsequent discussion that took place. According to the Government, the use of the word "reluctant" was not intended to suggest the Inspectorate's unwillingness to implement existing legislative provisions relating to minimum age, but instead was intended to convey the difficulties encountered by the Inspectorate in establishing whether young persons were employed in industrial undertakings. Some reasons for such difficulty were mentioned: the interest of parents that children who had left school be employed in the absence of alternative education, the desire of employers to avoid restrictions connected with the employment of young persons, and economic considerations in a situation of high unemployment. The Government stressed that the national legislation was in conformity with the Convention and that they were unaware of the existence of any employment of persons under the minimum age.

The Committee takes due note of the above information. It recalls that the provisions of the Labour Code Ordinance are indeed in line with the requirements of the Convention. The Committee points out however that legislation alone is not sufficient to give effect to the Convention in practice. It considers that the importance of measures of enforcement can never be overemphasized with regard to the issue of minimum age. As to the Government's reference to the situation of unemployment, the Committee recalls that it has already pointed out in the *General Survey* of 1981 concerning minimum age (paragraph 6) that, if poverty is the basic cause of child labour, poverty may also be one of its consequences: where large numbers of children must go to work either to support themselves or to contribute to family incomes, they take the place of older workers who are often paid higher wages.

Noting that the Government's report has not been received, the Committee again requests the Government to indicate what measures have been taken or are envisaged to ensure the effective enforcement in practice of the minimum age set forth by the Convention and the national legislation, including the efforts made by the Labour Inspectorate *(Article 2)*. Please also mention measures for the practical enforcement of the above provision on the registers of persons under 16 years of age *(Article 4)*. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Saint Lucia, Seychelles.*

Convention No. 6: Night Work of Young Persons (Industry), 1919

Burkina Faso (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

The Committee refers to its previous comments in which it pointed out that sections 3 and 7 of Order No. 539 of 29 July 1954 were not in conformity with *Article 2 of the Convention* (section 3 of the Order prohibits the night work of young workers and apprentices, whereas the Convention applies to all persons under 18 years of age, whether they are manual or non-manual employees in industrial undertakings; section 7 permits exceptions to the prohibition on night work which are broader than those set out in the Convention). The Committee notes the Government's statement that, in the context of its programme of activities for 1994, the Ministry of Employment, Labour and Social Security is planning the revision of all the texts applying the 1992 Labour Code. The text in question will be revised and will take into account the observations and comments made by the Committee of Experts. The Committee hopes that the text will be revised in the near future and that this revision will bring it into full conformity with the above provisions of the Convention. The Committee requests the Government to indicate any progress achieved in this respect and to supply a copy of the text when it has been revised.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Austria, Chad.*

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Jamaica (ratification: 1963)

The Committee notes with regret that for the third consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes from the Government's reply to its previous observations that the Jamaican Bill on Merchant Shipping has not yet been submitted to Parliament. This Bill was, among other things, to eliminate the restrictions in section 157 of the United Kingdom Merchant Shipping Act, 1894 (applicable to Jamaica) which, unlike the Convention, provides that "in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages".
>
> The Committee is bound once again to reiterate its hope that the above-mentioned Bill will become law in the very near future so as to give full effect to the Convention on this point, which has been the subject of the Committee's concern for many years. It requests the Government to report any progress made in this regard and to supply the text of the new Act as soon as it is adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Panama (ratification: 1970)

For a number of years the Committee has been drawing the Government's attention to the need to adopt the necessary measures to ensure the application of *Article 2 of the Convention*. In this connection, the Committee recalls that section 62 (read together with section 5) of the Bill to regulate work at sea and on inland waterways submitted to the Legislative Assembly gives full effect to this provision of the Convention by providing for a minimum unemployment indemnity of three months' basic wage in the event of shipwreck.

However, in its last report the Government states that the above Bill was unable to be adopted by the Assembly during the last session and that the new Government which has been in power since September 1994 is currently studying the possibility of including in the Bill the amendments suggested by the Committee in its most recent comments concerning the maritime Conventions ratified by Panama. Once amended, the Bill is to be again submitted by the Government to the Legislative Assembly. The Committee notes this information. It hopes that the Bill will be adopted in the very near future and that it will give full effect to Article 2 of the Convention. It asks the Government to provide a copy of the text as soon as it has been adopted.

Seychelles (ratification: 1978)

The Committee takes note of the adoption of the Seychelles Merchant Shipping Act (1992) which repeals the United Kingdom Merchant Shipping Act which was previously applicable. Since it appears that there is no provision in the new Act for unemployment indemnity to seamen in the case of loss or foundering of a vessel, the Committee hopes that the Government's next report will contain full information on any law or regulations giving effect to the Convention.

[The Government is asked to report in detail in 1996.]

Tunisia (ratification: 1970)

The Committee's previous comments concerned the need to amend the Merchant Shipping Code to ensure that the protection laid down in the Convention applies to seafarers employed on pleasure vessels of *10 gross tonnes or less*, in accordance with *Article 1, paragraph 2 of the Convention*, and the Maritime Labour Code in order to ensure payment of an unemployment indemnity equal to at least two months' wages, in accordance with *Article 2, paragraph 2*. In reply, the Government states that the Bill to amend certain sections of the Maritime Labour Code and to harmonize the national legislation with Conventions Nos. 8, 22, 23, 55 and 91 has been examined by the Council of Ministers and submitted to the Chamber of Deputies. A copy of the Bill will be transmitted to the Office once it has been enacted. The Committee trusts that the Bill and the necessary amendments to the Merchant Shipping Code will be adopted in the very near future in order to give full effect to the above provisions of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Dominica, Finland, New Zealand, Papua New Guinea, Singapore, Solomon Islands*.

Information supplied by *Uruguay* in answer to a direct request has been noted by the Committee.

Convention No. 9: Placing of Seamen, 1920

Argentina (ratification: 1933)

1. The Committee notes the information provided by the Government in reply to its earlier comments. It also notes the new observations made in December 1994 by the Union of United Maritime Workers (SOMU), which supplemented the previous observations of the same organization received in March 1993. The unions inform about the difficult employment situation of Argentine seafarers, which in their opinion, is a consequence of the adoption of Decrees Nos. 1772/91, 817/92 and 1493/92. The Committee observes that the Government's report contains no reference to these observations. It therefore asks the Government once again to refer to the observations of the SOMU in its next report and to make such comments as might be judged appropriate. The Committee also reiterates its request for information, statistical or otherwise, concerning unemployment among seafarers and concerning the work of employment agencies for seafarers, as required by *Article 10, paragraph 1, of the Convention.*

2. *Article 4.* With reference to its earlier comments which it has been making for a number of years, the Committee notes the Government's statement in the report according to which seafarers are placed on board Argentine vessels directly, without intervention of employment exchanges, and that there is no obligation on the part of the Government to establish a system of free public employment offices for seafarers. The Committee notes that the Government considers the present legislation and practice in the country to be in conformity with the letter and spirit of the Convention. The Committee recalls in this connection the provision of paragraph 1 of this Article, according to which,

> ... each Member which ratifies this Convention agrees that there shall be organized and maintained an efficient and adequate system of public employment offices for finding employment for seamen without charge. Such system may be organized and maintained either:

(a) by representative associations of shipowners and seamen jointly under the control of a central authority, or,

(b) in the absence of such joint action, by the State itself.

In its earlier comments the Committee noted an indication in the Government's report for the period ending 30 June 1992 concerning the activities of the Coordination of Employment Services Department of the National Directorate of Employment of the Ministry of Labour and Social Security as regards the placement of seamen, with a view to establishing a maritime employment exchange. The vital importance for such an employment exchange for seafarers is also highlighted in the observations by the SOMU referred to above. The Committee would be grateful if the Government would indicate, in its next report, whether any steps have been taken to establish a maritime employment exchange. It trusts that appropriate measures will be taken by the Government, in the near future, to set up a system of public employment offices for seafarers, in order to give effect to this Article of the Convention.

3. *Article 5.* The Government refers in its reply to the national system of collective bargaining, which, in its opinion, satisfies the requirements of this Article. With reference to the comments it has been making on this subject over a number of years, the Committee recalls in this connection that this Article provides for the establishment of committees consisting of an equal number of representatives of shipowners and

seafarers to advise on matters concerning the carrying on of public employment offices for seafarers. It therefore reiterates its hope that the Government will not fail to supply, in its next report, information requested by the report form on measures taken under this Article regarding the establishment of such advisory committees.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

Cameroon (ratification: 1970)

Article 5 of the Convention. The Committee notes the information supplied by the Government in its reports for the periods 1989-92 and 1992-93, and particularly the adoption of Act No. 92/007 of 14 August 1992 establishing the Labour Code. The Committee notes that the reports contain no new information in answer to its previous direct requests and that the new Labour Code of 1992 contains no provisions for the constitution of committees which are required under this Article to consist of an equal number of representatives of shipowners and seamen to advise on matters concerning the carrying on of employment offices for seamen. The Committee observes that for several years there has been no progress in giving effect to this Article of the Convention. It is therefore bound to reiterate the hope that the Government will not fail to take the necessary measures in the near future to ensure application of this Article and asks it to indicate in its next report any progress made in this respect.

Article 10. The Committee again expresses the hope that in its future reports the Government will provide the statistical or other information required by this Article, and particularly all available information on the activities concerning seamen carried on by the employment offices of Kribi, Limbé and Dovala.

Chile (ratification: 1935)

The Committee notes that the Government's report gives no further particulars in reply to its earlier comments. It therefore reiterates its previous observation which read as follows:

> 1. In its previous comments, the Committee pointed out that Article 4, paragraph 1, of the Convention required the Government to organize and maintain an efficient and adequate system of public employment offices "for seamen" without charge. The work of employment offices must be administered by "persons having practical maritime experience" (*paragraph 2*).
>
> The Committee notes the placement activities undertaken by the National Vocational Education and Employment Service, through municipal employment offices, and private employment agencies [Presidential Decree No. 146, of December 1989, to approve the regulations issued under Legislative Decree No. 1, of 1989 respecting training and employment]. Private employment agencies have to register with the National Service and may be established by a workers' union or a trade union organization. The Government considers that it is an efficient and adequate system not only "for seamen", but also for the other workers in the country. In practice, the representative associations of shipowners and the trade unions of seamen maintain constant relations which promote the speedy placement of staff to the satisfaction of both parties. All these operations, according to the Government, are administered by persons with broad practical maritime experience.
>
> The report form adopted by the Governing Body requests data on the number of applications for employment received, the number of vacancies notified and the number of seamen placed in employment. The Government states that there are no special statistics for seamen.
>
> The Committee is bound to emphasize that data on the organization of the system of offices for finding employment for seamen without charge (see also Article 10, paragraph 1)

contribute to ensuring that full effect has been given to the above provisions of the Convention. The Committee therefore trusts that in the near future the Government will be in a position to supply the above data on the placement of seamen in order to ensure the full effectiveness of "an efficient and adequate system of employment offices for finding employment for seamen without charge".

2. Article 5. In its previous comments, the Committee noted that this provision requires committees consisting of "an equal number of representatives of shipowners and seamen" to be constituted. In its report, the Government states that there are no special committees consisting of shipowners and seafarers constituted to monitor the efficient and adequate operation of the offices for finding employment for seamen without charge.

The Committee is bound to express once again the hope that the Government will provide further information on cases in which committees consisting of an equal number of representatives of shipowners and seamen have been consulted in all the aspects of the operation of the offices for finding employment for seamen without charge.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future. It would also suggest to the Government to apply to the ILO for direct contacts in order to find a solution to the problems mentioned above.

Djibouti (ratification: 1978)

Article 5 of the Convention. The Committee notes from the Government's reply to the Committee's earlier comments that there is no advisory committee consisting of an equal number of representatives of shipowners and seafarers in the country. The Committee recalls in this connection that this Article provides for the establishment of such committees to advise on matters concerning the carrying on of public employment offices for finding employment for seafarers. With reference to the comments the Committee has been making on this subject over a number of years, it expresses the hope that the Government will not fail to adopt measures in the near future in order to establish such advisory committees and to give effect to this Article of the Convention. It asks the Government to provide, in its next report, information on any progress achieved in this regard.

Article 10, paragraph 1. Please provide statistical information as soon as it is available, concerning the number of seafarers registered and the number of placements of seafarers carried out by the Maritime Affairs Service.

Greece (ratification: 1925)

The Committee notes the information supplied by the Government in its report. It notes, in particular, that the Ministry of Merchant Marine is considering the reorganization of the Seamen's Employment Offices (GENE) with a view to achieve their more efficient operation and has already asked the organizations of shipowners and seafarers to submit their relevant proposals. It also notes that penalties have been increased for contraventions of Law No. 192/1936 on finding employment for seamen, as one of the measures taken against the practice of placing of seafarers through intermediaries. The Committee asks the Government to keep the ILO informed of any new developments in these fields, particularly with regard to recruitment of foreign seafarers.

Article 8 of the Convention. With reference to its earlier comments, the Committee notes that the Government reiterates its previous statement to the effect that there is no reason for the Seamen's Employment Offices (GENE) to offer their services for employment of foreign seafarers aboard Greek vessels because they are directly engaged from various ports abroad.

While noting this information, the Committee trusts that the Government will reconsider its position and will adopt appropriate measures in order to give effect to this Article of the Convention which requires each ratifying State to take steps to see that the facilities for employment of seamen provided for in this Convention shall, if necessary by means of public offices, be available for the seamen of all countries which ratify this Convention. It asks the Government to provide, in its next report, information on any progress made in this regard.

Uruguay (ratification: 1933)

Articles 4 and 5 of the Convention. The Committee notes the information provided by the Government in reply to its earlier comments. It notes that a tripartite administrative committee ("Comisiòn Administradora" provided for in Decree No. 463/968 and referred to in the Government's previous reports) has not yet been established in practice. The Government indicates, however, that advisory committees provided for in Article 5 are in the process of being constituted. The Committee notes the detailed description of a draft text concerning the reorganization of the Registration Service for Seafarers in the Merchant Marine which has been sent for consultation to the organizations concerned, including those representing shipowners and seafarers. It is stated in the description of the draft that the purpose of the reorganization is to ameliorate the functioning of the Registration Service for Seafarers and to bring it into conformity with the requirements of the Convention. The Committee expresses the hope that the draft text referred to above will be adopted in the near future and that full effect will be given to these Articles of the Convention. It asks the Government to supply a copy of the text as soon as it is adopted and to provide, in its next report, information on the organization and functioning of the system of employment offices for finding employment for seamen without charge and on measures taken with regard to the consultation procedure of committees consisting of an equal number of representatives of shipowners and seamen, as required by the provisions of these Articles.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Finland, Luxembourg, Nicaragua, Slovenia*.

Convention No. 10: Minimum Age (Agriculture), 1921

A request regarding certain points is being addressed directly to *Sri Lanka*.

Convention No. 11: Right of Association (Agriculture), 1921

Morocco (ratification: 1956)

The Committee takes note of the information supplied by the Government in its report.

In its previous observation, the Committee had requested the Government to indicate whether the Dahir of 1957 on trade unions which guarantees that trade union organizations may be formed without prior authorization applied to the agricultural sector, to the exclusion of the Dahir of 1958 concerning the establishment of associations. The Committee notes the Government's reply to the effect that all bodies established in the agricultural sector are subject to the provisions of the Dahir of 1957 and enjoy the rights it provides for, if they are established for union purposes. If the bodies in question are established in the form of associations, however, the Dahir of 1958 applies to them. The Government further stresses that union rights are exercised in the agricultural sector under the same conditions as those regulating the exercise of such rights in other branches of economic activity.

In response to the comments of the General Union of Moroccan Workers (UGTM) and the Democratic Confederation of Labour (CDT) concerning arbitrary measures taken against trade union committees in the agricultural sector, the Government states that the comments submitted by the two organizations concerned do not contain any precise information on any cases where arbitrary measures have been taken. In addition, it adds that these organizations have not submitted any indications from the establishments or authorities which were the source of such arbitrary measures so as to enable the competent authorities to investigate the matter and establish the validity or invalidity of such allegations. The Government further points out that the fact that workers in the agricultural sector enjoy their full rights to join trade unions is well reflected by the number of unions which have been established in this sector, under the protection of the legal texts applicable in this respect. To strengthen this protection, the draft labour code provides that any discrimination against workers on the basis of their union activity or membership is forbidden under sanction of law.

The Committee notes this information and requests the Government to supply a copy of this draft labour code along with its next report. The Committee further requests the Government to keep it informed of any developments regarding the adoption of this draft labour code.

Rwanda (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its comments made since 1969 relating to the exclusion of agricultural workers from the scope of the Labour Code, the Committee notes the Government's statement that the draft Legislative Decree to repeal section 186, which contains the said exclusion, was submitted to the competent authorities on 23 February 1991.
>
> Recalling the previous statement made by the Government that persons engaged in agriculture have, in practice, always enjoyed the same rights of association and combination as industrial workers, the Committee trusts that this draft Decree will be adopted in the very near future by the competent authorities in order to bring the legislation into conformity with current practice and with the Convention. It requests the Government to supply a copy of the Labour Code, as amended, once it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, Estonia, Guatemala, Sri Lanka*.

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Brazil (ratification: 1957)

With reference to its previous comments, the Committee notes with satisfaction the adoption of Decrees Nos. 611 and 612 of 21 July 1992 containing, respectively, the revised editions of the regulations concerning social security benefits under Act No. 8.213 of 24 July 1991 and organization of the social security under Act No. 8.212 of 24 July 1991, which provide for uniformity and equality of benefits for both urban and rural populations.

The Committee requests the Government to provide information on the practical application of the Convention, including available statistics, in accordance with *point V of the report form*.

Colombia (ratification: 1933)

With reference to its previous comments, the Committee notes the adoption of the new Social Security Act, No. 100 of 1993, which sets up a comprehensive social security system guaranteeing its gradual extension to the whole population including the agricultural sector (section 6 of Act). With particular reference to the employment injury branch, the Committee also notes that Decree No. 1295 of 1994, issued under section 139 of the above-mentioned Act, applies by virtue of section 3 to all enterprises engaged in activities on the national territory and to all workers in both public and private sectors, subject to the exceptions provided for in section 279 of Act No. 100 of 1993. The Committee would be grateful if in its next report the Government would provide detailed information and statistics on the effective extension of the social security scheme in respect of employment injury so as to cover the whole national territory and all agricultural wage-earners coming under the scope of the Convention.

[The Government is asked to report in detail in 1996.]

Malaysia (ratification: 1961)

Peninsular Malaysia

1. The Committee notes from the Government's report that door to door inspections are being conducted to ensure compliance with the Employee's Social Security Act 1969, which applies to all employees, as well as to provide information in this respect, and that 10,489 employers in the agricultural sector employing one or more employees have been registered with the Social Security Organization and receive coverage as a result of these measures. The Committee would appreciate being kept informed of any new measures taken to strengthen the application of the Convention in practice.

2. The Committee hopes that the Government's next report will contain statistical data as requested by *point V of the report form* adopted by the Governing Body, once the compilation of data mentioned by the Government has been completed.

Morocco (ratification: 1956)

In its previous observations and further to the comments of 5 March 1991 by the Democratic Confederation of Labour and the General Union of Workers of Morocco on the application of the Convention, the Committee asked the Government to provide detailed information on the measures taken or contemplated to encourage employers and workers better to meet their obligations to report occupational accidents occurring in the agricultural sector, and to supply statistics on occupational accidents in this sector.

In its reply, the Government states that the Ministry of Employment and Social Affairs has sent letters to the Federation of Chambers of Agriculture and to the Moroccan Union for Agriculture to draw their attention to the importance of complying with the provisions of the law that concern occupational accidents, and the need to officially notify occupational accidents in the agricultural sector. Furthermore, agricultural labour law inspectors conduct daily visits to supervise application of the Labour Code, including its provisions on occupational accidents. The Government adds that, according to the national survey on the active population in the agricultural sector, carried out in 1986-87, the number of workers employed in agriculture is 380,264, and that under the existing legislation, all workers in the agricultural sector are subject to the occupational accident compensation scheme. While noting this information, the Committee asks the Government to state in its next report the number of occupational accidents that have occurred in the agricultural sector, the number of victims who have been compensated, and the amount of benefits granted in the event of incapacity, invalidity or death of a worker as a result of such an accident.

Nicaragua (ratification: 1934)

1. In its previous comments the Committee has requested the Government to provide information on the extension to all agricultural wage-earners of the benefit of the *social security* laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment, in accordance with *Article 1 of the Convention*. In its reply the Government states that at present the social security scheme is applied to all workers employed in the rural areas irrespective of their professional activity. The Committee notes this information. It also notes, according to the Quarterly Statistical Report of the Nicaraguan Institute of Social Security and Welfare (INSSBI) for the second quarter of 1993, supplied by the Government with its report on Convention No. 17, that in practice social security coverage has shown a clear downward trend and that the social security system counted only 10,679 contributors in the rural areas of the country. In this situation the Committee would like the Government to indicate measures taken to extend progressively the coverage of the social security to rural areas, so that all agricultural wage-earners benefit in practice from the protection provided by the social security scheme in case of employment injuries.

2. The Committee notes the Government's statement concerning social security benefits provided for workers in rural areas. It therefore once again hopes that the Government will have no difficulty in repealing section 103 of the Labour Code (which allows judges to reduce the compensation due to workers sustaining occupational injury in small agricultural enterprises) in order to grant all agricultural wage-earners the same benefits as those granted to other wage-earners, in accordance with the Convention.

[The Government is asked to report in detail in 1997.]

* * *

In addition, a request regarding certain points is being addressed directly to *Angola*.

Convention No. 13: White Lead (Painting), 1921

Algeria (ratification: 1962)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

> In comments it has been making since 1965, the Committee noted that there were no specific provisions giving effect to the Convention. It noted the Government's indication in its report for the period 1991-92 that the text to give effect to the provisions of the Convention has already been prepared and submitted to the social partners for examination.
>
> The Committee trusts that the necessary measures will be taken in the very near future to ensure the application of *Article 1 of the Convention* (prohibition of the use of white lead and sulphate of lead in the internal painting of buildings), *Article 2* (regulation of the use of white paint in artistic painting), *Article 3* (prohibition of the employment of males under 18 years of age and of all females in any painting work involving the use of white lead), *Article 5* (regulation of the use of white lead in painting operations for which its use is not prohibited) and *Article 7* (establishment of statistics on morbidity and mortality due to lead poisoning). The Government is asked to indicate in its next report any progress made in this respect and to provide a copy of the relevant text as soon as it has been adopted.

* * *

In addition, a request regarding certain points is being addressed directly to the *Central African Republic*.

Convention No. 14: Weekly Rest (Industry), 1921

Argentina (ratification: 1936)

The Committee notes the information provided by the Government in reply to its previous comments, as well as the observations made by the United Maritime Workers' Union (SOMU), received on 2 December 1994 and transmitted to the Government by a letter of 20 December 1994. The Committee observes that SOMU continues to allege that the adoption of Decrees Nos. 1772/91, 817/92 and 1493/92 adversely affect workers in the maritime and related sectors. The Committee further notes that SOMU has recently informed the Office by correspondence dated 5 January 1995, that certain provisions of Decree No. 817/92 which effectively abolish the right to collectively bargain conditions of work, including the right to weekly rest, have been declared unconstitutional. In light of this information, the Committee refers to the previous observations made by SOMU in April 1993 and communicated to the Government for comment in May 1993, indicating that Decrees Nos. 1772/91, 817/92 and 1493/92 annulled almost all the collective agreements which had been in force in the maritime and related sectors. In reply to those observations, the Government states in its report for the period ending 30 June 1994, that the application of the Convention to any of the undertakings listed in *Article 1, paragraph 1, of the Convention*, has in no way been affected.

The Committee would be grateful if the Government would further elaborate, in its next report, how the annulment of collective agreements by virtue of Decrees Nos. 1772/91, 817/92 and 1493/92 has *not* affected the application of the Convention to any of the undertakings listed in Article 1, paragraph 1. It also would appreciate comments, in particular, from the Government on SOMU's recent observations concerning the unconstitutionality of Decree No. 817/92.

[The Government is asked to report in detail in 1996.]

Bolivia (ratification: 1954)

In earlier comments, the Committee noted that under section 31 of Decree No. 244 of 1943 (a regulation issued under the General Labour Law), an employer may grant to a worker, in the event of work on the weekly rest day, either compensatory rest or compensatory remuneration. In a report received in February 1991, the Government indicated that the General Labour Law was in the process of revision with the technical assistance of the ILO. In its report for 1994 on the application of several Conventions, including Convention No. 14, the Government indicates there have been no legislative changes.

The Committee must recall that *Article 5 of the Convention*, provides for, as far as possible, compensatory periods of rest in cases where exceptions have been made regarding the right to weekly rest. In this regard, the Committee once again points out that section 31 of Decree No. 244 allows more latitude to the employer than is envisaged under the Convention. It hopes that the new legislation will be adopted as soon as possible, with a provision to ensure that workers employed on a weekly rest day are granted a compensatory rest. It requests the Government to indicate the progress achieved in this respect and to supply a copy of the relevant text when it is adopted.

The Committee also requests the Government to refer to the comments that it has made under Convention No. 106.

Turkey (ratification: 1946)

The Committee notes the information provided by the Government in its report for the period ending 30 June 1994, as well as the observations made by the Turkish Confederation of Employer Associations and by the Confederation of Turkish Workers' Trade Unions (TURK-IS), furnished by the Government as attached documentation to its report. The TURK-IS alleges that in recent years, due to economic reasons, many workers are not benefiting from their right to weekly rest. The Committee requests the Government to provide a response to these comments made by the TURK-IS.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Argentina, Azerbaijan, Bahamas, Belarus, Belgium, Botswana, Chile, China, Comoros, Czech Republic, Estonia, Ethiopia, Grenada, Haiti, Hungary, Iraq, Malaysia* (Sarawak), *Mali, Malta, Mauritius, New Zealand, Niger, Peru, Solomon Islands, Swaziland, Thailand, Venezuela, Zimbabwe.*

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Costa Rica, Dominica, Seychelles.*

Convention No. 17: Workmen's Compensation (Accidents), 1925

Angola (ratification: 1976)

With reference to its previous comments, the Committee notes from the Government's report that the implementing regulations concerning the compensation for industrial accidents and occupational diseases provided for in section 58 of the Act respecting the social security system, No. 18/90, have not yet been approved and that, pending their adoption, the applicable legal provisions consist of section 141 of the General Labour Act of 1981, which requires all enterprises to insure their workers against industrial accidents and occupational diseases, and of the supplementing Resolution of the People's Assembly No. 12/81 of 7 November 1981. This Resolution provided that the compensation for occupational injuries would continue to be regulated by the system that was previously applicable, although the relevant legislation had been formally repealed and no new corresponding social security legislation had yet been adopted at that time. Taking into account the subsequent adoption of Act No. 18/90 mentioned above, the Committee asks the Government to indicate which provisions of the previous legislation still remain in force and to what extend they continue to ensure the payment of cash benefits to the victims of industrial accidents, in accordance with *Articles 5 to 8 of the Convention*. At the same time the Committee once again expresses the hope that the above-mentioned regulations concerning compensation for industrial accidents and occupational diseases provided for under section 58 of Act No. 18/90 will be adopted very shortly and that they will give full effect to the Convention. It requests the Government to indicate the progress made in this respect in its next report and to supply the text of these regulations when they have been adopted.

The Committee also draws the Government's attention to certain points that it is raising in a direct request.

Cape Verde (ratification: 1979)

Article 2, paragraph 2, of the Convention (in conjunction with Article 3, paragraph 2). With reference to its previous comments, the Committee notes with interest that under section 23 of the new Constitution promulgated on 4 September 1992 foreigners and stateless persons benefit in the national territory from the same rights, liberties and guarantees and are subject to the same obligations as nationals, with the exception of political rights and those reserved by the Constitution or the law to nationals. Therefore, the condition of reciprocity provided for by section 26 of the former Constitution has been repealed.

With regard to section 14 of the Civil Code and section 3, paragraph 1, of Legislative Decree No. 84/78 respecting compulsory occupational accident insurance, under which foreign workers are not considered to be in a similar situation to nationals unless there is a reciprocal arrangement with their respective country, the Committee also takes due note of the Government's intention to adopt the necessary measures in order to bring this legislation in line with the Convention. The Committee therefore once again hopes that these measures will be adopted soon so as to eliminate, in conformity with the Convention, all conditions of reciprocity in the field of compensation for occupational accidents established by the above-mentioned legislation.

Iraq (ratification: 1960)

Article 2 of the Convention. In its previous comments, the Committee requested the Government to indicate the categories of workers who may benefit under section 112 of the Labour Code of 1987, which provides for the application to uninsured workers of the provisions respecting industrial accidents of Act No. 39 of 1971 respecting workers' retirement and social security. The Committee wished in particular to be informed whether this section only concerns workers whom the employer has omitted to insure, even though they are covered by Act No. 39 of 1971, or whether it also covers workers who cannot be insured because they do not come within the scope of social security.

In this respect, the Committee notes Instruction No. 3130 of 12 February 1989 respecting the compensation of uninsured workers in the event of industrial accidents, the text of which was supplied by the Government, as well as its statement that all workers are covered by the protection irrespective of whether they are insured and that this coverage concerns workers whom the employer has omitted to insure. In view of the fact that, by virtue of section 3, the application of Act No. 39 of 1971 to all the workers covered by the Labour Code will be progressive, the Committee once again requests the Government to indicate whether section 112 of the Labour Code, as well as the above Instruction, also apply to workers who cannot yet be insured under Act No. 39 of 1971, and particularly those working in enterprises employing fewer than five workers.

Article 5. For a number of years, the Committee has been pointing out to the Government that the national legislation does not appear, in accordance with this provision of the Convention, to ensure the proper utilization of the compensation paid in the form of a lump sum to the victim of an industrial accident causing permanent incapacity of less than 35 per cent (or to his dependants in the event of death). The Committee recalls that the Government stated in its previous report that the beneficiaries in question receive the compensation and at the same time keep their job and the whole of their wage, but that the Government did not indicate the provisions by virtue of which the workers concerned keep their job and their wage. In its 1992 observation, the Committee therefore requested the Government to supply further information on this matter.

In its latest report, the Government refers to section 36(5) of the Labour Code of 1987, by virtue of which a contract of employment shall terminate "when the worker has become incapacitated to the extent of 75 per cent or more and is unable to work, as substantiated by an official medical certificate". According to the Government, this means that a contract of employment cannot be terminated in cases where the worker is the victim of a rate of permanent incapacity which is below 75 per cent. While noting this information, the Committee notes that this provision does not appear to prevent a contract of employment being terminated in the case of workers who are incapacitated to an extent that is less than 75 per cent on grounds other than incapacity referred to in the above section 36 of the Labour Code. In these conditions, the Committee is bound once again to hope that the Government will adopt the necessary measures to ensure, in accordance with the Convention, the proper utilization of the compensation paid in the form of a lump sum to victims of industrial accidents which have resulted in permanent incapacity of less than 35 per cent.

Malaysia (ratification: 1961)

Peninsular Malaysia

Article 2 of the Convention. The Government states in its report that efforts will be made to review the existing legislation which contains a wage ceiling of RM2,000 for compulsory coverage for both non-manual and manual workers. The Government also mentions that the system in practice includes many workers who are above this income limit and that steps have been taken to encourage more workers to participate in the insurance scheme on an optional basis. The Committee notes this information.

The Committee points out that while *Article 2(d)* does permit the exemption of non-manual workers whose remuneration exceeds a limit, manual workers must still be included in the compulsory insurance scheme, regardless of income level. The Committee hopes that the Government will take the necessary measures to amend the Social Security Act so as to comply fully with the requirements of the Convention.

Mauritius (ratification: 1968)

With reference to its previous comments, the Committee notes that the amendments to the Workmen's Compensation Act (Chapter 220), to which the Government has been referring since 1982, are still under consideration. The Committee recalls in this respect that the Workmen's Compensation Act, while covering certain categories of workers excluded from the application of the National Pensions Act, 1976 (i.e. certain workers in the sugar industry), does not contain provisions giving effect to the following provisions of the Convention:

Article 5 (payment of compensation in the form of periodical payments in the case of permanent incapacity or death; provided that it may wholly or partially be paid in a lump sum if the competent authority is satisfied that it will be properly utilized); *Article 7* (additional compensation for injured workmen whose incapacity necessitates the constant help of another person); *Article 9* (provision of necessary medical and surgical aid); *Article 10* (supply and renewal of necessary artificial limbs and surgical appliances) and *Article 11* (guarantee against the insolvency of the employer or insurer).

The Committee regrets that the necessary measures have still not been taken in order to ensure full application of the Convention, either by extending the coverage of the National Pensions Act and the Regulations made under it so as to cover all workers protected by the Convention, or by amending the Workmen's Compensation Act as indicated above. It asks the Government to report any progress made in this respect.

Myanmar (ratification: 1956)

1. In reply to the Committee's previous comments the Government indicates that the enactment of new labour laws, including the Workman's Compensation Act, should be made only after the adoption of the new state Constitution with a view to making them in line with the provisions contained therein. The Committee notes this information. In view of the fact that it has been commenting on the application of the Convention since 1959 and that the revision of the Workman's Compensation Act has been referred to several times by the Government since 1987, the Committee can only express once again the hope that the new Workman's Compensation Act will be adopted in the very near future so as to provide in particular:

(a) in accordance with *Article 5 of the Convention*, that the compensation payable to the injured workman or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum if the competent authority is satisfied that this will be properly utilized;

(b) in conformity with *Article 10*, that no maximum amount shall be fixed for the supply and normal renewal of such artificial limbs and surgical appliances as are recognized to be necessary;

(c) in conformity with *Article 11* that measures be taken to ensure in all circumstances the payment of compensation to victims of industrial accidents or their dependants in case of insolvency of the employer or insurer.

2. The Committee requests the Government to supply information on the number of protected employees under the Workman's Compensation Act and the social security legislation respectively in relation to the total number of employees who are working in industrial and commercial undertakings, as well as the amount of benefits provided under these two laws in case of industrial accidents.

[The Government is asked to report in detail in 1996.]

New Zealand (ratification: 1938)

With reference to its previous comments, the Committee takes note of the information provided by the Government in its report, the observations made by the New Zealand Council of Trade Unions (NZTCU) and the New Zealand Employers' Federation (NZEF), as well as the Government's new reply to these observations received on 3 January 1995.

In its reports, the Government states that it has initiated a complete review of the Accident Rehabilitation and Compensation Insurance Scheme, including a review of compliance with ILO Conventions. In the framework of this review, the Minister for Accident Rehabilitation and Compensation Insurance (ARCI) has established a Review Panel to review the regulations made under the ARCI Act of 1992. The report of the Panel, which included consideration of matters concerning compliance with ILO Conventions, was considered by the Interdepartmental Committee (IDC) set up for this purpose and by the Cabinet Committee on the Implementation of Social Assistance Reforms, which has now reported to Cabinet with the purpose of providing ministers with details of the work programme, timetable and consultation strategy for the review process. Work on ILO issues has been put on a separate fast track for consideration by the Department of Labour and ACC since it is acknowledged that this work will have to be incorporated into the IDC's main work programme and the final policy advice to ministers. Accordingly, the IDC will report by February 1995 to the Ministers of ARCI and Labour with the preliminary analysis of issues, options and a process for resolving issues of compliance with Conventions Nos. 12, 17 and 42. The Government intends to inform the ILO about this work as results become available.

The Committee notes this statement. It therefore hopes that, in the framework of the review process of the ARCI scheme referred to by the Government, it will not fail to take the necessary measures in the very near future to bring the national legislation into full conformity with the Convention on the following points:

Article 9 of the Convention. In its previous comments, the Committee noted that under the ARCI Act of 1992 and its regulations, victims of industrial accidents are required to bear a part of the costs of the necessary medical and other treatment, contrary to this provision of the Convention. In this respect the Government confirms its earlier statements that the ARCI Act still does not comply with the requirements of Article 9 of the Convention and that in circumstances where a treatment provider charges more than the ARCI Act permits as a contribution, employees are currently required to pay part of the treatment costs which are required as the result of work-related injuries.

In its communication, the New Zealand Council of Trade Unions has indicated that, while a relatively simple legislative amendment is required, no steps have been taken by the Government to honour the commitment to the ILO to rectify this breach of the Convention. The NZCTU regrets that, despite official commitment that "the ARCI

Corporation is working on solutions as a priority", the NZCTU has not been consulted on any possible solutions, nor have any such solutions been made public. The NZCTU therefore remains concerned by the situation which allegedly costs New Zealand workers who are injured at work millions of dollars each year.

The New Zealand Employers' Federation regrets the Government's acceptance of the ARCI Act's non-compliance with the requirements of Article 9 of the Convention. In its opinion, this Article could not reasonably require reimbursement of all possible costs associated with the provision of aid to an injured workman and makes sense only if read as allowing a reasonable limitation to be imposed. Whereas any treatment provider, in deciding what is necessary aid, must also consider what is reasonable treatment, by the same token, the Government which has framed the applicable legislation must be entitled to specify reasonable limits beyond which further compensation for particular treatment will not be paid. If, however, the Government were to change the law so that Article 9 is fully complied with, and if the current scheme is to continue, the NZEF considers that there can be no additional employer obligation or liability. In addition, the NZEF is of the opinion that the ARCI scheme, which covers a far greater range of persons — both employees and those who are not employed — should be considered as a "special scheme" in the meaning of Article 3(2) of the Convention, so that the Convention should not apply to New Zealand.

The Committee notes the statement made by the Government in its report as well as the comments of the two occupational organizations. It also notes the Report of the ACC Regulations Review Panel of 11 August 1994 supplied by the Government which, as regards Treatment Costs Regulations, points out in particular that "the reimbursement amounts have not yet been adjusted to keep pace with increasing charges, and were reduced by 15 per cent in 1992", and that "claimants have been called upon to pay an increasingly greater percentage of treatment costs as the gap between actual costs and the authorized maximum has widened". The Panel suggested that the detailed control of treatment costs by regulation presently in use be progressively replaced, "so as to enable reasonable costs to be paid in full", by a more flexible regime based on guidelines under which "the practitioner could be required to accept the payment in full settlement which would avoid the claimant having to pay part of the cost" (page 11).

In this situation, the Committee is bound once again to urge the Government, in conformity with the assurances given, to take the necessary measures in the very near future to revise the national legislation so as to give full effect to Article 9 of the Convention, according to which the cost of medical, surgical and pharmaceutical aid recognized to be necessary in consequence of industrial accidents shall be defrayed either by the employer or by the insurance institutions. With respect to the comments made by the NZEF, concerning Article 3(2) of the Convention, the Committee wishes to point out that this provision contemplates only the situation of particular categories of workers, such as, for example, public servants or miners, which might be covered by special schemes, the terms of which shall not be not less favourable than those of this Convention.

Article 10. With reference to its previous comments, the Committee notes the detailed explanations given by the Government concerning the conditions imposed by the ARCI (Social Rehabilitation — Aids and Appliances) Regulations 1992 and the Accident Compensation (Prescribed Artificial Limbs, Aids and Prosthetic Appliances Costs) Regulations 1990 as to the amounts payable to the injured workers to cover the costs associated with the supply and renewal of the appliances in question. It notes in particular that, as stated by the Government, these regulations do not allow for payment for aids and appliances which cost less than 100 dollars, as well as for the maintenance, repair, etc. of any aid or appliance where the amount to be paid is less than 200 dollars in any 12-month period. The maximum amounts payable under the regulations, excluding certain specific devices, are limited to 5,000 dollars per claimant over any three-year period.

In its comments, the NZCTU states that the New Zealand Government is also currently in breach of Article 10 of the Convention, both in imposing unreasonable maximum limits on the amounts payable under the regulations with no discretion to the ACC to exceed those limits and in requiring injured workers to pay for all aids which cost less than 100 dollars and all maintenance, repair, etc. which costs 200 dollars or less in any 12-month period.

The Committee takes note of this information. It also notes with interest that the ACC Regulations Review Panel recommended in its report in particular that where the cost of the aids is less than 100 dollars, "this limitation must be removed". As regards the restriction of entitlement to 5,000 dollars every three years, the Panel pointed out that it does not allow for changing needs, for example, in case of a deterioration in the condition of a claimant. The Committee recalls in this connection that, under Article 10 of the Convention, injured workmen shall be entitled to the free supply and renewal of such artificial limbs and surgical appliances as are recognized to be necessary at no cost to the injured worker. It therefore hopes that the Government will be able to indicate in its next report any measures taken or contemplated to ensure full application of this Article of the Convention.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1958)

Articles 5 and 7 of the Convention. With reference to its previous comments, the Committee notes the information supplied by the Government in its report. The Government states that the draft Bill to amend sections 306 and 311 of the Labour Code is still under examination, but that the financial situation of the Social Insurance Fund, although it has improved slightly, does not yet permit the implementation of the changes contained in the draft text. In these circumstances, the Committee is bound to hope once again that the Government will make every effort to take the necessary measures in the near future to give full effect in law and practice to these Articles of the Convention which provide, respectively, for the payment of compensation in the form of periodical payments without limit of time in the event of permanent incapacity or death, as well as the provision of additional compensation in cases where the injury results in the injured workman requiring the constant help of another person. It requests the Government to indicate any progress achieved in this respect in its next report.

Philippines (ratification: 1960)

Further to its previous comments, the Committee notes with satisfaction that pursuant to Executive Order No. 400, dated 26 April 1990, and Executive Order No. 14, dated 25 August 1992, all permanent disability pensioners of the Social Security System covering the private sector were granted a monthly supplemental pension (carer's allowance), in accordance with *Article 7 of the Convention*.

The Committee raises certain other questions in a request addressed directly to the Government.

Portugal (ratification: 1929)

The Committee notes the detailed information supplied by the Government in its report in reply to its previous direct request, as well as the comments made by the General Confederation of Portuguese Workers (CGTP). Referring to the progressive integration of protection against industrial accidents into the general social security scheme, as set out in section 72 of Act No. 28/84 of 14 August 1984, the Committee notes that the situation has remained unchanged and that compensation for industrial accidents continues to be covered by insurance companies.

In this respect, the CGTP stated in its comments that victims of industrial accidents find themselves in an unequal position confronting insurance companies in court because, unlike the insurance companies, they cannot afford to be represented by a physician during the medical examination on the basis of which the court determines the degree of incapacity. Moreover, the courts frequently appoint as presidents of medical boards physicians from insurance companies. Finally, the CGTP alleges that the amounts of payments in compensation in industrial accidents continue to decrease and in many cases are very low. For these reasons, the CGTP considers the integration of protection against industrial accidents into the general social security scheme to be of extreme urgency.

In its reply, the Government indicated that the Labour Procedures Code, approved by Legislative Decree No. 272-A/81 of 30 September 1981, in Chapter 1 of Title 6, which regulates procedures arising out of industrial accidents and diseases, would appear to take due account of the interests of the parties in such procedures. However, the Government informed the Ministry of Justice of the allegations of the CGTP for the purpose of clarifying the facts. As regards the low amounts of payments in compensation of industrial accidents, the Government indicated that it had signed with the social partners, including the CGTP-IN, the Agreement on Occupational Safety, Hygiene and Health which provided, inter alia, for the review of the legal provisions concerning methods for calculating compensation for occupational accidents and diseases, and that this revision was at present at the preliminary stage.

The Committee notes this information. It hopes that in its next report the Government will be able to indicate any progress made in the implementation of section 72 of Act No. 28/84. As regards the matters raised by the CGTP, the Committee would like to be informed of the results of the inquiry undertaken by the Ministry of Justice and of the revision of provisions concerning methods for calculating compensation for occupational accidents referred to by the Government.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the second year in succession, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 7 of the Convention.* The Committee notes that Regulations No. 37 of 1984 do not, as set out in this provision of the Convention, provide for the provision of additional compensation to victims of accidents who suffer incapacity and require the constant help of another person. The Committee therefore hopes that the Government will take the necessary steps to give effect to this provision of the Convention.
>
> *Articles 9 and 10.* In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, section 52(1) of the National Insurance Act No. 10 of 1978 limits to a prescribed amount the right to medical assistance and the provision of artificial limbs. In view of the fact that the Regulations issued under the Act do not appear to contain provisions in this connection, the Committee hopes

> that the Government will take the necessary steps to secure the application of these Articles of the Convention, which do not fix any maximum amount as regards such benefits.
>
> The Committee also requests the Government to indicate whether the medical treatment set out under section 52(1) of Act No. 10 of 1978 also covers pharmaceutical assistance and the supply, repair and renewal of artificial limbs, in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Kingdom (ratification: 1949)

1. *Article 9 of the Convention* (free pharmaceutical aid). In reply to the Committee's previous comments concerning the participation by victims of industrial accidents in the cost of pharmaceutical products prescribed for out-patients, the Government reiterates that it has no plans to extend automatic exemption from prescription charges in cases of industrial accidents because of the risk of adversely affecting the relationship that exists between patient and doctor, the latter having to decide not only which medicines should, or should not, be dispensed free of charge, but also whether or not a particular ailment was a consequence of the accident. Moreover, the Government states it would be unfair to single out one particular group for such exemption when there may be others in similar circumstances, such as the innocent victims of road accidents or assaults, who might equally feel that they too should be exempt. Furthermore, extending automatic exemption to victims of industrial accidents would not necessarily direct help towards those most in need, since only those people whose income is above the qualifying threshold for charge remission would benefit from such a change. In this respect, the Government continues to believe that the manner in which the National Health Service defrays the costs of medical aid in cases of industrial accidents is best targeted on those who are likely to have the greatest difficulty in paying, with a view to ensuring that adequate protection is provided to those that need it.

Notwithstanding these explanations, the Committee notes that the prescription charge has been increased from £2.80 on 1 April 1989 to £4.25 from 1 April 1993. It recalls, however, that no charge is made for pharmaceutical aid whilst a patient is resident in hospital as well as for those out-patients whose income is below a certain threshold. It also notes that, as stated by the Government, about 80 per cent of prescribed items (89 per cent in Northern Ireland) are now dispensed free of charge due to extensive arrangements for prescription charge exemption and remission which protect vulnerable groups in the community, including old and young people of a certain age, pregnant women and mothers who have had a baby in the previous 12 months, war or Ministry of Defence disablement pensioners, and people who suffer from certain medical conditions. In the light of these extensive exemptions, the Committee considers that it should not be difficult for the Government to include victims of industrial accidents, irrespective of their income, among the categories exempted from the prescription charge so that, if treated at home or after leaving hospital, they may benefit or continue to benefit from the free pharmaceutical aid as is recognized to be necessary in consequence of accidents. In this respect, the Committee wishes once again to draw the Government's attention to the fact that any provision laying down participation by victims of industrial accidents in the cost of pharmaceutical benefits is contrary to the Convention. It therefore once again hopes that the Government will reconsider its position so as to ensure full application of the Convention on this point.

2. The Committee notes the comments made by the Trades Union Congress, supplied by the Government with its report, according to which, since 1979 most of the previous benefits of the Industrial Injuries Scheme have been steadily abolished by the Government and in 1986 entitlement to the most significant of benefits, Disablement Benefit, was drastically restricted. In the light of these comments, the Committee hopes that the Government's next report will contain full information in reply to the TUC comment, specifying the legislative changes that have taken place with reference to the application of the Convention. The Committee also asks the Government to provide the detailed statistical information requested in *point V of the report form* adopted by the Governing Body.

[The Government is asked to report in detail by 1 September 1995 at the latest.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Argentina, Bahamas, Burkina Faso, Cape Verde, Central African Republic, Comoros, Guinea-Bissau, Lebanon, New Zealand, Nicaragua, Philippines, Sao Tome and Principe.*

Convention No. 18: Workmen's Compensation (Occupational Diseases), 1925

Angola (ratification: 1976)

With reference to its previous comments, the Committee notes from the Government's report that the implementing regulations concerning compensation for industrial accidents and occupational diseases provided for in section 58 of the Act respecting the social security system, No. 18/90 of 27 October 1990, have not yet been approved and that, pending their adoption, the applicable legal provisions consist of section 141 of the General Labour Act of 1981, which requires all enterprises to insure their workers against industrial accidents and occupational diseases, and of the supplementing Resolution of the People's Assembly No. 12/81 of 7 November 1981. This Resolution provides that the compensation for occupational injuries will continue to be regulated by the system that was previously applicable, although the relevant legislation has been formally repealed and no new corresponding social security legislation has yet been adopted at that time. Taking into account the subsequent adoption of Act No. 18/90 mentioned above, the Committee asks the Government to indicate what provisions of the previous legislation still remain in force and to what extend they continue to give effect to the Convention.

In addition, the Committee recalls that, as it had already pointed out in 1980, the schedules of occupational diseases contained in the previously applicable legislation (the Angolan Labour Code of 1957 and the Rural Labour Code of 1962) failed to mention certain activities likely to cause poisoning by lead, its alloys or its compounds, and by mercury, its amalgams or its compounds, as required by *Article 2 of the Convention*. It also recalls that since that time the Government has been referring to a draft Decree on employment injury and occupational diseases, section 14 of which, according to the information supplied previously by the Government, contained a schedule of diseases in line with the Convention. This Decree has, however, not been adopted. In this situation, the Committee is bound once again to express the hope that the Government will take all the necessary measures to adopt in the very near future the above-mentioned regulations respecting compensation of industrial accidents and occupational diseases provided for in section 58 of Act No. 18/90. It also hopes that these regulations will provide, in accordance with *Article 1 of the Convention*, for compensation to workmen incapacitated by occupational diseases, or to their dependants, in accordance with the general principles relating to compensation for industrial accidents, and that it will also contain a schedule of occupational diseases, including all the diseases and processes that are liable to provoke them, as set out in the Schedule annexed to *Article 2*. It requests the Government to supply detailed information on the progress achieved in this respect and to supply the text of the above regulations when they have been adopted.

Burkina Faso (ratification: 1960)

Article 2 of the Convention. The Committee notes the information supplied by the Government in its report and the draft text of Decree No. 93PF/PM to revise the schedule of occupational diseases. It wishes to draw the Government's attention to the following points:

1. The Committee notes with interest that, in accordance with section 1 of the draft Decree, the list of occupational diseases includes diseases produced by lead and its compounds, and diseases produced by mercury and its compounds. However, it notes that under section 2 of the draft text, the diseases caused by the poisoning referred to section 1, and the indicative or limitative schedule of the principal types of work liable to cause these diseases or infections are enumerated in schedules which are to be annexed to the draft text. In view of the fact that the above schedules were not supplied by the Government, the Committee is bound to hope that they will make it possible to cover all forms of poisoning by lead, mercury or their compounds, and not only certain pathological manifestations listed restrictively as they are in the legislation which is currently in force (see in this respect, for example, Schedule 1 of Annex IV of Act No. 3-59-ACL to establish an employment injury prevention and compensation scheme).

2. The Committee also hopes that the schedule relating to anthrax infection will cover all the pathological manifestations resulting from the disease, and not only certain symptoms. In this respect, it hopes that the wording of item 13 of section 1 of the draft text will be modified by replacing the term "anthrax fever", which is only a symptom of the disease, by the term "anthrax infection", in accordance with the Convention.

Finally, the Committee hopes that the schedule relating to anthrax infection will also refer to the types of work enumerated in the right-hand column of the schedule annexed to the Convention, and in particular to the "loading and unloading or transport of merchandise".

The Committee hopes that the draft Decree, after it has been modified to take into account the above points, will be adopted in the near future in order to give full effect to the Convention.

Central African Republic (ratification: 1960)

In reply to the Committee's previous comments, the Government states that as a result of many institutional changes it has not been possible for the Legislative Commission to examine the draft texts needed to bring the national legislation into conformity with the Convention, since the Legislative Commission has not yet been able to meet. However, it adds that the schedule of occupational diseases, the draft of which is still awaiting examination, is not limitative and that measures have been taken to ensure its adoption.

The Committee notes this information. It recalls that it has been raising this matter since 1966 and that a draft Decree had been drawn up in 1978 during direct contacts.

In this situation, the Committee is bound to urge the Government once again to take the necessary measures in the very near future to bring the schedule of occupational diseases annexed to Ordinance No. 59-60 of 1959 into conformity with *Article 2 of the Convention* by the deletion of the limitative nature in the list of pathological manifestations which may be caused by lead and mercury poisoning and by the addition, among the kinds of work which may lead to anthrax infection, of the operations of "loading and unloading or transport of merchandise" in general.

Guinea-Bissau (ratification: 1977)

The Committee notes with regret that, for the second year in succession, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous observation, the Committee notes with regret from the information supplied by the Government that no progress has been made in completing the existing legislation by including a list of occupational diseases, in accordance with the provisions of *Article 2 of the Convention*. It recalls that in its previous report the Government stated its intention of resolving this question in the near future. In view of the importance of the question, the Committee is bound once again to insist that the void which it noted in the legislation be filled by the adoption in the very near future of a list of occupational diseases including, at least, those enumerated in the schedule appended to Article 2 of the Convention which shall be recognized as occupational diseases when they are contracted in the circumstances specified in the above schedule.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that, for the second consecutive year, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments, the Committee notes the new Social Security Act, No. 1/90, of 31 January 1990. It notes that, like the former legislation, the new Act does not contain a list of occupational diseases as set out in *Article 2 of the Convention*. The Committee notes, however, that pursuant to section 87(2) of the Act, diagnosis of occupational diseases is carried out by medical services on the basis of specifically defined technical standards. Furthermore, section 146(1) of Act No. 6/92 of 20 March 1992 issuing the rules on individual conditions of work requires employers to report occupational diseases and keep a record of them.
>
> The Committee would be grateful if the Government would provide detailed information on the manner in which diagnosis of occupational diseases is carried out in practice for purposes of compensation and to provide a copy of the technical standards adopted under section 87(2) of Act No. 1/90. It trusts that the Government will not fail to take the necessary measures, in the context of the above technical standards or any other implementing regulations, to adopt in the very near future a list of occupational diseases which includes at least those contained in the Schedule to Article 2 of the Convention, setting out the diseases which are to be recognized as such in the event that they are contracted in the circumstances set out in the Schedule. In this connection, it suggests that the Government might wish to seek technical assistance from the ILO.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Central African Republic, Colombia, Egypt, Mozambique, Pakistan*.

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Central African Republic (ratification: 1964)

The Committee notes that the Government's report contains no new information on the issues it has been raising for a number of years. It none the less recalls the Government's statement during the discussion at the Conference Committee in 1993 concerning the application of Convention No. 118 by the Central African Republic, to the effect that it has prepared appropriate drafts to make the necessary amendments to the legislation. In these circumstances the Committee again expresses the hope that the above-mentioned amendments will be adopted shortly to ensure, in accordance with *Article 1, paragraph 2, of the Convention*, that the dependents (survivors) of a worker who was a national of a State bound by the Convention, who were not resident in the Central African Republic at the time of the victim's death and continue not to be so resident, may claim the survivors' benefit established in the legislation on employment injury compensation if it is proved that they were actually dependent on the victim at the time of his death. The Committee hopes that a report will be supplied for examination at its next session and that it will contain full information on progress made in this respect.

Guinea-Bissau (ratification: 1977)

With reference to its previous comments, which it has been making for a number of years, the Committee notes with regret that for the fourth year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in the request addressed directly to the Government.

Iraq (ratification: 1940)

The Committee notes that in reply to its previous comments the Government refers mainly to certain provisions of the Workers' Pension and Social Security Law, No. 39 of 1971, without supplying the detailed information on the points raised by the Committee, which dealt in particular with the follow-up of the conclusions and recommendations, approved by the Governing Body at its 250th (May-June 1991) Session, of the Committee set up to consider the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution alleging non-observance by Iraq of a number of Conventions. In this situation the Committee hopes that the Government will not fail to supply a report for examination at its next session which will contain detailed information on the following points:

1. (a) The Government is requested to indicate any other provisions (apart from Decision No. 603 of 1987) or contractual conditions which may affect the right of foreign workers engaged in state enterprises, such as arms factories, to receive compensation for industrial accidents both in Iraq and in the country of their new residence.

(b) As regards the situation of temporary workers, to whom Decision No. 603 applies, please indicate which provisions of the legislation ensure the right of such workers to receive compensation in the case of industrial accidents, particularly in cases where they terminate their service before the expiration of the fixed period of employment or the completion of the work for which they were engaged (see also under point 2 below).

2. (a) In its previous comments, the Committee observed that under section 38(b)(ii) of Law No. 39 of 1971, which provides for the payment of compensation abroad to an Arab citizen if he has "returned to *his* country at the *end* of his insured period of service", Arab workers who leave Iraq *before* their contract period has expired or who settle in a country *other* than their country of origin, may be refused payment of compensation due to them. On the other hand, under the same provisions no such restrictions are applied in respect of Iraqi workers. The Committee recalls in this respect that in its previous report the Government stated that Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq was being studied by the Government with a view to its revision. The Committee, therefore, once again expresses the hope that the Government will not fail to indicate the legislative measures taken or contemplated to ensure equality of treatment between nationals of Iraq and Arab workers in respect of compensation for industrial accidents, particularly in the case of their residence abroad, including the modifications to Instruction No. 2 of 1978. Please supply a copy of the text of such legislative measures, when adopted.

(b) As regards nationals of States bound by the Convention other than Arab countries, the Committee recalls that under section 38(b)(iii) of Law No. 39 of 1971, no payment of benefits is made outside Iraq except under reciprocity agreements or international labour Conventions and subject to the necessary authorization under Instruction No. 2 of 1978. Please indicate measures taken or contemplated at the level of the Iraqi Institute of Social Security to ensure, without any restrictions, that in all cases compensation benefits are paid to all workers who are nationals of a country bound by the Convention, in their new country of residence.

3. The Committee notes, from the information supplied by the Government representative in the discussion in the Conference Committee in 1994 on the application of Convention No. 118 by Iraq, that the Government intends to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of the national economic situation. The Committee would like the Government to continue to provide information on any measures taken or contemplated with a view to resuming payment of compensation for industrial accidents to beneficiaries residing abroad, accompanied by the relevant statistical data. Please also indicate whether workers who left Iraq at the time of the war and who had no opportunity to present their requests for payment of the compensation due to them, may do so from their new place of residence abroad and, if so, in what way.

Mauritius (ratification: 1969)

Article 1 of the Convention. In its previous comments, the Committee pointed out that section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended, according to which foreign nationals may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years, is not in conformity with *Article 1, paragraph 2*, of the Convention, which provides that equality of treatment in respect of compensation for industrial accidents shall be guaranteed *without any condition as to residence* to the nationals of every State which has ratified the Convention and who are victims of an industrial accident, as well as to their dependants. In its reply, the Government recalls that while foreign nationals having resided in Mauritius for less than two years are not covered by the National Pensions Act, they are entitled under the Workmen's Compensation Act to compensation for accident arising out of and in the course of employment. It adds that a technical committee has been set up to completely review the Workmen's Compensation Act and opportunity will be taken to consider the observations made by the Committee. The Committee notes this statement with interest. It once again expresses the hope that the Government will not fail to take this opportunity to amend section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, so as to bring national legislation into full conformity with the Convention on this point and that it will be able to indicate progress made in its next report.

Syrian Arab Republic (ratification: 1960)

Article 1, paragraph 2, of the Convention. The Committee refers to its observation concerning Convention No. 118, Article 5.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, Guinea-Bissau, Saint Lucia*.

Convention No. 20: Night Work (Bakeries), 1925

A request regarding certain points is being addressed directly to *Peru*.

Convention No. 22: Seamen's Articles of Agreement, 1926

Argentina (ratification: 1950)

The Committee notes the information provided by the Government in relation to its previous direct request. In reply to the comments made by the Union of United Maritime Workers (SOMU), the Government states that, in view of the inadequacy of the previous legislation, in order to reorganize the maritime sector, the national executive authority had to adopt Decrees Nos. 1772/91, 817/92 and 1493/92, which have been supported by voluminous case law. In this respect, it refers to a ruling by the Supreme Court, dated 2 December 1993, which supported the constitutionality of Decree No. 817/92. Please provide full information, such as a summary, of the above ruling. The Government also refers to its communication, dated 29 January 1994, relating to Case No. 1684 of the Committee on Freedom of Association, submitted by the General Confederation of Labour (CGT) and the International Confederation of Free Trade Unions (ICFTU). With regard to the above case, the Committee refers to the conclusions and recommendations of the Committee on Freedom of Association contained in its 292nd Report, which the Governing Body examined and approved at its 259th Session (March 1994).

In view of the changes introduced by Decree No. 817/92, the Committee would be grateful if the Government would supply full information for each of the provisions of the Convention and each of the points in the report form approved by the Governing Body. In this respect, please take into account the communications of the SOMU dated

29 April 1994 and 2 December 1994, particularly as regards the Bill respecting the special Argentinian register of vessels, which would in practice exclude Argentinian seafarers and ratings from the vessels included under the future register *(Article 1, paragraph 1, of the Convention)*, as well as on the engagement of foreign seafarers who do not speak Spanish *(Article 3, paragraph 4)*, and the payment of undeclared wages completely outside the terms of the law *(Articles 3, paragraph 5, and 6, paragraph 3(9))*. The Committee also notes a communication from the SOMU dated 5 January 1995 alleging the unconstitutionality of Decree No. 817/92. The Committee requests the Government to make the observations that it considers appropriate in this respect.

[The Government is asked to report in detail by 1 September 1995 at the latest.]

Colombia (ratification: 1933)

The Committee notes the information supplied by the Government in its report and notes that the legislation necessary to give effect to the Convention has not yet been adopted. In view of the scant progress made in this regard despite the comments it has been making for many years, the Committee again stresses that the draft Decree referred to by the Government in its report ensures application only of *Articles, 1, 2, 3, paragraphs 1, 4 and 6; Articles 4, 5, paragraph 1; Articles 6, 9, paragraph 1; Articles 10, 11 and 12 of the Convention*. There are as yet no regulations to give effect to *Articles 3, paragraph 2* (conditions for signature of the agreement), *8* (information on conditions of employment on board), *9, paragraphs 2* (conditions for giving notice) *and 3* (exceptional circumstances in which notice, even when duly given, shall not terminate the agreement), *and 15* (measures to ensure compliance with the Convention).

The Committee notes in particular the information to the effect that the Legal Department of the Ministry of Labour and Social Security is at present in possession of the above-mentioned draft Decree, and has been informed of the Committee's previous observation. The Committee therefore trusts that, in its next report, the Government will be able to state that legislation has been adopted to ensure that full effect is given to the Convention.

With regard to *Article 5, paragraph 2*, the Committee notes that the seafarers' discharge book approved by Resolution No. 00591 of 1982 provides for mention of any misconduct on the part of the seafarer and the penalties imposed by captains and employers. This means that the discharge book would contain comments on the quality of the seaman's work. The Committee trusts that the Government will take the necessary steps to modify the discharge book so as to bring it into conformity with this provision of the Convention, which prohibits any such comments in documents issued to seamen for the purpose of recording their employment on board.

In addition, the Committee would be grateful if the Government would provide detailed information on the practical effect given to the Convention and, in particular, samples of articles of agreement, relevant collective agreements, extracts from inspection reports, statistics of the number of seamen signed on and the number and nature of contraventions reported *(point V of the report form)*.

[The Government is asked to provide a detailed report in 1996.]

France (ratification: 1928)

Article 9, paragraph 1, of the Convention. The Committee notes the information provided by the Government in its report and particularly that a Bill adopting various social measures envisages the amendment of section 101 of the Maritime Labour Code in order to take account of this provision of the Convention. The Committee recalls that this amendment should ensure that an agreement for an indefinite period may be terminated by either party in any port where the vessel loads or unloads. It hopes that the Government's next report will contain information on the adoption of the above Bill.

[The Government is asked to report in detail in 1996.]

Liberia (ratification: 1977)

The Committee notes the information contained in the Government's report, which refers to Liberian Maritime Law and the corresponding regulations, as amended up to 1992.

Article 3, paragraph 4, of the Convention. The Committee notes that under Regulation 10.320(1) a foreign language version of the articles of agreement may be appended to the English version. The Committee points out that the above-mentioned regulation goes in the direction of meeting the requirement of this provision of the Convention. However, in order to ensure full compliance with the Convention in the case of a seafarer who does not understand English, it is necessary to have the contract written in a language he understands and that, if need be, the representative of the competent authority or the master, in the presence of witnesses, should explain the contents of the contract. The Committee asks the Government to indicate the measures taken or under consideration to ensure that full effect is given to this provision of the Convention.

Article 9, paragraph 2. The Committee notes that, under section 323(4) of Liberian Maritime Law, where articles of agreement are not for a stated period they expire at the end of one year, provided that at least five days' prior notice has been given. It draws the Government's attention to the fact that the above notice must be given in writing and that national law must prescribe the manner of giving notice, so as to preclude any subsequent dispute between the parties. Please provide all useful information on this matter.

Articles 13 and 14, paragraph 2. Please indicate the measures taken or contemplated to ensure the application of these provisions of the Convention.

Point V of the report form. Please give a general appreciation of the manner in which the Convention is applied.

[The Government is asked to report in detail in 1996.]

Mauritania (ratification: 1963)

The Committee notes that the Merchant Marine Code currently being prepared at the Directorate of the Merchant Marine, will take into consideration the previous comments on the application of *Article 9, paragraph 1, of the Convention* (possibility for the seafarer of terminating an agreement for an indefinite period in any port where the vessel loads or unloads), *Article 12* (determining the circumstances in which the seafarer may demand his immediate discharge) and *Article 14, paragraph 2* (right of the seafarer to a certificate of service). The Committee hopes that the Government's next report will state that the above-mentioned Merchant Marine Code has been adopted. It reminds the Government that the Office has proposed that an expert be made available to the Government to assist it in taking stock of existing national maritime legislation, to make recommendations on the reforms needed and to check the conformity of the existing legislation with the international labour Conventions ratified by Mauritania in the area concerned and to examine the possibility of further ratifications. The Committee hopes that the Government will follow up this proposal.

Mexico (ratification: 1954)

Article 9, paragraph 1, of the Convention. With reference to its previous comments, the Committee notes the content of the two clauses on termination of employment relationships in collective agreements CC-35/88 and CC-713/87 referred to in the Government's report. It notes, however, that these clauses refer to the application not of Article 9 of the Convention, but Article 11 (circumstances in which the owner or master may immediately discharge a seafarers). Furthermore, the Committee would like to point out once again that Article 9(3) does not give States which ratify the Convention an unlimited right to depart from the general rule established in Article 9, paragraph 1, but establishes a special rule to be applied in exceptional circumstances to be determined by the national legislation, in which notice even when duly given shall not terminate the agreement. Since the circumstances are exceptional — which is not the case for vessels in foreign ports — they do not warrant the adoption of a general rule to replace the rule of Article 9(1). Consequently, the provision of section 209(III) of the Federal Labour Act cannot be regarded as consistent with the Convention since it provides that agreements cannot be terminated when the vessel is abroad; it amounts to a normal circumstance which is inconsistent with Article 9, paragraph 1.

The Committee again urges the Government to take the necessary steps to amend the national legislation to bring it into conformity with this provision of the Convention.

The Committee raises another point in a direct request to the Government.

[The Government is asked to report in detail in 1996.]

Norway (ratification: 1940)

The Committee takes note of the information supplied in answer to its previous comment. In particular, the Government seems to indicate that if one of the following four factors — persons (i) neither residents nor nationals of Norway; (ii) hired by a foreign employer; (iii) engaged to attend on passengers; (iv) employed on a cruise ship — referred to in section 1 of the Seamen's Act is absent, the person concerned will benefit from the legislation applying the Convention. The Committee recalls that persons who are employed or engaged in any capacity on board any vessel and entered on the ship's articles shall be covered by the legislation applying the Convention. Therefore, if the work carried out on board ship is related to navigation or is normally regarded as being the work of a crew member, the Convention applies to any person in charge of such work and normally entered in the ship's articles. The Committee would be glad if the Government would confirm that the legislation referred to above ensures this application.

The Committee also takes note of the amendments to the NIS (Norwegian International Ship Register) Act which entail a reduction in the number of sections of the Seamen's Act from which one can depart from under collective agreements for ships registered in the NIS. This seems to take into consideration the concerns of the Norwegian Shipping and Offshore Federation.

Pakistan (ratification: 1932)

The Committee notes that the Government's report covers the period ending 30 June 1993 and that it does not reply to its previous comments. Furthermore, the All Pakistan Federation of Trade Unions (APFTU) emphasizes that the Bill to which the Government has been referring for several years has not yet been submitted to Parliament. It further requests the Government to apply Articles 5 and 14, paragraph 2, of the Convention.

The Committee is therefore bound to reiterate its previous comments, which read as follows:

> The Committee notes that the Government's report has not been received. It refers to its earlier observations concerning *Articles 1 and 5(2) of the Convention* and the discussion in the Conference Committee in 1992, as well as the Government's report for the period ending 30 June 1991 (received October 1992) and the comments of the All Pakistan Federation of Trade Unions (APFTU), dated 11.10.93, and the Pakistan National Federation of Trade Unions (PNFTU), dated 5.10.93.
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> The Government indicated in 1992 that the Committee's observations would be dealt with in the newly drafted Merchant Shipping Bill, then to be put to the National Assembly; and the Conference Committee hoped that the legislation would be amended as soon as possible, the matter having been outstanding for many years, and that the Government would provide a copy. However, the APFTU has pointed out that the draft should be placed before the Assembly newly elected on 6 October 1993.
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> The Committee recalls that, under Article 1, the Convention applies to all seagoing vessels registered in the territory, and thus covers engagements taking place in ports outside Pakistan. It notes that the new section 155 of the Act, as it appears in the draft transmitted by the Government in 1992, would seem to satisfy *Article 1*.
>
> *Article 5* of the Convention, requiring the supply to seafarers of a document recording their employment on board a vessel but not containing any statement of quality of work or wages, seems to be implemented by section 161 of the 1992 draft. However, the Committee recalls the requirement as to a separate certificate (*Article 14(2)*), stating the quality of work or whether obligations under the articles of agreement have been discharged: this could be met by not deleting the present section 43A but amending it so that it applies to discharges wherever they take place, and specifying that such certificate is separate from a section 161 document.
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> The Committee hopes the Government will supply a report indicating the progress made in ensuring the application of these provisions of the Convention and including a copy of the amending legislation. It also hopes that, in the light of the PNFTU suggestion, the Government will provide specimens of both the *Article 5* document and the *Article 14(2)* certificate, as amended.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous observation, the Committee takes note of the preliminary draft on employment in the merchant marine provided by the Government with its report. The Committee notes with interest that the Bill allows a contract for an indefinite period to be terminated in any port (section 45), in accordance with *Article 9, paragraph 1, of the Convention*, provided, however, that notice of a period of at least the duration of the last voyage has been given. The Committee would be grateful if, in its next report, the Government would state whether the legislation defines the term "voyage" and would indicate the average duration of a voyage bearing in mind present navigation conditions. The Committee trusts that the enactment of the Bill will be completed by the repeal of section 257 of the Labour Code which prohibits the termination of a contract in ports other than the port of engagement.
>
> However, the Bill does not appear to make provision to ensure that the seaman has understood the agreement (*Article 3, paragraph 4*). The Committee hopes that it will be possible for an appropriate clause to be inserted into the Bill and that the Government's next report will contain information on progress made in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1962)

Article 5, paragraph 2, of the Convention. With reference to its previous comments, the Committee notes with interest that the seafarers' discharge book has been amended so that it makes no mention of the quality of the seafarers' work. It would be grateful if the Government would provide a specimen of the amended discharge book.

Article 6, paragraph 3(8). The Committee notes with interest that, since there is no legal obligation to indicate in the articles of agreement the provisions to be supplied to seafarers, they are regulated by the Regulations on Food and Catering On Board Merchant Ships (Presidential Decree No. 04-90-DG/MGP).

Article 6, paragraph 3(11). The Committee notes that, according to the Government, there is no legal provision covering the right to paid annual leave applying specifically to seafarers, which is why the grant of such leave is not provided for in the seafarers' articles of agreement. However, in the Government's previous report, for the period ending 30 June 1990, it was stated that the Peruvian law establishing the right to 30 days' paid annual leave of all workers in the country, also applied to seafarers. The Committee refers to the 1979 Political Constitution which provides that all workers are entitled to paid annual leave (article 44, third paragraph), and Legislative Decree No. 713 of 1991, which provides that workers are entitled to 30 calendar days of vacational rest for each full year of service (section 10). Consequently, the Committee would be grateful if the Government would indicate whether seafarers are actually entitled to vacational rest. If so, the Committee asks the Government to take the necessary steps to ensure the application of this provision of the Convention.

Article 9, paragraphs 1 and 2. The Committee notes that the Regulations on Ports and Activities at Sea and on Inland Waterways (Presidential Decree No. 002-87-MA of 9 April 1987) has not yet been amended as indicated previously. The Committee would be grateful if the Government would provide a copy of the most recent version of the above Regulations and of Presidential Decree No. 0002-RE to which it refers in its report.

[The Government is asked to report in detail in 1996.]

Venezuela (ratification: 1944)

The Committee notes the information supplied by the Government in its reports. It notes in particular that the Regulations on Navigation at Sea and on Inland Waterways is currently being revised in order to bring it into line with the Convention. It trusts that the Government will take the following comments, which have already been addressed to it, into consideration when it takes the necessary measures to harmonize it legislation with the provisions of the Convention.

Article 8 of the Convention. The Committee draws the Government's attention to the need to ensure that seafarers can obtain clear information on board as to their conditions of employment so that they may satisfy themselves as to the nature and extent of their rights and obligations. The Committee hopes that the relevant legislation will be amended so as to establish the necessary measures to give effect to this provision of the Convention.

Article 9, paragraph 1. The Committee notes that a seafarer may not be dismissed while the vessel is at sea or in a foreign country unless he has been recruited in the country in question (section 353 of the Labour Act of 1990), which provides seafarers with better protection than that established in the Convention. The Committee refers to the provision of section 98 of the above Act, which provides for resignation as a form of termination of the employment relationship, and points out that under Regulation 5 of the 1992 Regulations on Labour On Board Vessels Sailing at Sea and On Inland Waterways, the agreement may not be terminated when the vessel is in foreign waters or uninhabited places. This could have the effect, in the event of a long voyage without any return to a Venezuelan port, of severely restricting the seafarer's right to terminate the agreement. The Committee therefore hopes that this provision will be amended so that seafarers may terminate agreements for an indefinite period in any port where the vessel loads or unloads, provided that the prescribed notice period is observed, even when the boat is in foreign ports.

Article 13, paragraph 1. The Committee notes the Government's reply to its previous comments on this point and, in particular, the reference to sections 100 and 107 of the Labour Act, which deal with resignation and the notice requirements for voluntary resignation terminating an appointment of indefinite duration without proper cause. The Committee notes, however, that contrary to the Convention, the possibility of the seafarer's obtaining command of a vessel or an appointment as mate or engineer or to any other post of a higher grade than he actually holds, or the fact that other circumstances have arisen since his engagement which render it essential to his interests that he should be permitted to take his discharge, are not expressly provided for in legislation as proper reasons for resignation. Neither are they among the reasons listed in the above Act (section 103). It also notes that a seafarer who, without proper reason, terminates a fixed-term appointment before its expiry, must pay his employer compensation for damage and injury (section 110). The Committee therefore reiterates that the above-mentioned legislation should be amended in order to bring it into line with this provision of the Convention.

Article 14, paragraph 2. The Committee notes section 111 of the Labour Act, referred to by the Government in its report. It notes that not only does this provision not provide for the possibility for a seafarer to obtain from the master, at all times, a separate certificate as to the quality of his work or, failing that, a certificate indicating whether he has fully discharged his obligations under the agreement, but it also forbids any entry in the certificate other than the ones required (duration of employment relationship, last salary paid and duties). The Committee cannot but reiterate the hope that this legislation will be amended to bring it into line with this provision of the Convention.

Furthermore, the Committee notes section 335 of the Labour Act which provides that articles of agreement shall be signed where there is no collective agreement. The Committee points out that States ratifying the Convention are under the obligation to take the necessary steps to ensure that the work of seafarers is governed by articles of agreement signed by the shipowner or his representative *(Article 3 of the Convention)*, even if there is a collective agreement in this area. In this connection, the Committee recalls that the particulars referred to in *Article 6, paragraph 3*, most of which are provided for in section 2 of the above-mentioned Regulations, must appear in the articles of agreement and cannot, by reason of their nature, be provided for in collective agreements.

Point V of the report form. Please give a general appreciation of the manner in which the Convention is applied, providing a specimen of the seafarer's discharge book currently in force, together with statistical information on the number of seafarers signed on and the number of articles of agreement signed.

The Committee also wishes to point out that the Government may request technical assistance from the Office in amending the national legislation in order to harmonize it with the provisions of the Convention.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belize, Brazil, Chile, China, Croatia, Cuba, Djibouti, Egypt, Estonia, Finland, Ghana, Iraq, Italy, Mexico, Morocco, Myanmar, New Zealand, Poland, Portugal, Spain, Tunisia, United Kingdom, Uruguay.***

Convention No. 23: Repatriation of Seamen, 1926

Ireland (ratification: 1930)

Article 3, paragraphs 1 and 4, of the Convention. The Committee notes with regret the Government's reply to the comments it has been making since 1964, which reply essentially repeats what had been already noted by the Committee for the last 30 years. The Committee understands the complexity of making a comprehensive revision of Acts as old and as important as the Merchant Shipping Act, 1894 and the Merchant Shipping Act, 1906. It also understands the need to give priority to safety aspects of such a revision, as was earlier indicated by the Government to the International Labour Conference in 1991 and again in its most recent report. The Committee would be grateful if the Government would consider enacting separately, without waiting for the complete review and revision of the Acts, the draft provisions intended to ensure the right to repatriation of: (a) a seafarer who leaves the ship in a Commonwealth country; or (b) a foreign seafarer who joins the ship in one foreign port and leaves it in another. It trusts the Government will shortly pursue this or any other course of action to resolve the long-standing problem of the conformity of its legislation with the requirements of the Convention. In the meantime, the Committee reiterates its hope that the Government will indicate any practical difficulties met with in the application of the Convention.

[The Government is asked to report in detail in 1996.]

Liberia (ratification: 1977)

Further to its previous comments, the Committee notes with satisfaction that sections 336(1)(d) and 342 of the Maritime Law and Regulation 10.320(4) of the Maritime Regulations give effect to the requirements of *Article 5 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***China, Egypt, Estonia, Iraq, New Zealand, Poland, Portugal, Tunisia.***

Convention No. 24: Sickness Insurance (Industry), 1927

Austria (ratification: 1959)

Article 2, paragraph 1, of the Convention. The Committee notes the information supplied by the Government in its report, as well as the comments made by the National Labour Federation, according to which law enforcement has proved very difficult in respect of foreign women employed in domestic households, as their employment relationships were often on an hourly basis and the employers were increasingly reluctant to register them for sickness insurance, in breach of the duty to insure. The Committee hopes that the Government's next report will contain full information in reply to the comments made by the National Labour Federation, including information on any measures taken or contemplated to strengthen in practice the application of the Convention to this category of protected persons.

[The Government is asked to report in detail in 1996.]

Djibouti (ratification: 1978)

The Committee notes from the Government's report that there have been no changes in the application of the Convention. It recalls that for many years it has been requesting the Government to take steps to amend the legislation so as to provide for sickness insurance. It again expresses its hope that, with the technical assistance of the International Labour Office, the Government will endeavour to establish a sickness insurance scheme in accordance with the provisions of the Convention.

[The Government is asked to report in detail in 1996.]

Haiti (ratification: 1955)

With reference to its previous comments, the Committee notes that the Government's report has not been received. It therefore hopes that a report will be supplied for examination at its next session and that it will contain information on the measures taken or contemplated, with the assistance of the ILO, if need be, to progressively set up a system of general sickness insurance, in accordance with the Convention.

Peru (ratification: 1945)

I. With reference to its previous observations and the comments transmitted by the Central Union of Workers of the Peruvian Social Security Institute, the Committee notes the information supplied by the Government in its report, particularly as regards the new private health system introduced by Legislative Decree No. 718 of 8 November 1991.

The Committee notes in particular that the private health system (SPS), which will come into force on the date of enactment of the regulations issued under Legislative Decree No. 718, supplements the system administered by the Peruvian Social Security Institute (IPSS). Every worker has the right to select the system which suits him or her best and persons who are insured under the system administered by the IPSS may remain with that system or join the private system (section 3 of Legislative Decree No. 718). The new private health system will be administered by health service organizations (OSS), which shall be set up as legal entities and are obliged to register with the Superintendency of health service organizations (sections 4 and 5 of the above Decree). Furthermore, health service organizations provide health benefits and assistance in exchange for the amount of the statutory health contribution or a higher agreed amount (section 7 of the above Decree). While noting that the private health system established by Legislative Decree No. 718 of 1991 is established within the context of article 14 of the Constitution of Peru, which authorizes the existence of other public or private bodies in addition to the Peruvian Social Security Institute, provided that these entities provide supplementary or better benefits than those provided by the IPSS, with the agreement of the insured persons, the Committee considers that the new private health system raises certain issues relating to the application of the following provisions of the Convention.

Article 3, paragraph 1, and Article 4, paragraph 1, of the Convention. The Committee notes that Legislative Decree No. 718 of 1991 only contains provisions of a general nature in Chapter IV, regarding sickness benefit and medical assistance. In particular, in the contract concluded between a health service organization and the persons covered, the parties shall agree freely to the manner and conditions under which benefits are provided, although a number of matters must be determined, such as: (a) the benefits and other forms of compensation covered by the contract, including the percentages of coverage, the basic amounts and any ceiling to cash benefits; (b) the waiting periods; and (c) any exclusions from the above benefits.

In this respect, the Committee recalls that, in accordance with Article 3, paragraphs 1 and 2, of the Convention, an insured person who is rendered incapable of work by reason of the abnormal state of his bodily or mental health shall be entitled to a cash benefit for at least the first 26 weeks of incapacity from and including the first day for which benefit is payable. Furthermore, in accordance with Article 4, paragraph 1, the insured person shall be entitled free of charge, as from the commencement of his illness and at least until the period prescribed for the grant of sickness benefit expires, to medical treatment by a fully qualified medical practitioner and to the supply of proper and sufficient medicines and appliances. Moreover, the Committee draws attention to the fact that the Convention, in Article 3, paragraph 2, authorizes, but only for cash benefit for sickness, the imposition of a qualifying period and a waiting period which cannot be more than three days.

Article 6, paragraph 1. The Committee notes that health service organizations are established as legal entities subject to the supervision of the Superintendency of health service organizations, but they nevertheless operate in a competitive market, as recognized in the Preamble to Legislative Decree No. 718. The Committee recalls that, in accordance with Article 6, paragraph 1, of the Convention, sickness insurance shall be administered by institutions which are not carried on with a view to profit.

Article 6, paragraph 2. Legislative Decree No. 718 of 1991 contains no provision ensuring the participation of insured persons in the management of health service organizations.

Article 7, paragraph 1. The Committee notes that by virtue of sections 14 and 15 of Legislative Decree No. 718 of 1991, contributions to the private health system are payable exclusively by workers covered by the system. Indeed, while the workers participate in the provision of the financial resources of health service organizations at the rate of 8 per cent of the wage that is subject to contributions, with the deduction of the percentage established by regulation to be paid to the Peruvian Social Security Institute as a solidarity contribution, the whole of the employers' contribution, which amounts to only 1 per cent of the wage that is subject to contributions, is paid to the IPSS. The Committee recalls in this respect that, in accordance with Article 7, paragraph 1, the insured persons and their employers shall share in providing the financial resources of the sickness insurance scheme.

Article 9. Legislative Decree No. 718 of 1991 does not contain provisions on the right of appeal which has to be granted to insured persons in case of dispute concerning their right to benefit, in accordance with this provision of the Convention.

The Committee hopes that the Government will be able to take the necessary measures to supplement Legislative Decree No. 718 of 1991, before the coming into force of the private health system, for example on the occasion of the adoption of the regulations provided for under section 33 of the above Legislative Decree, so as to give full effect to the provisions of the Convention.

II. The Committee once again hopes that the Government's next report will contain detailed information on the measures taken in practice to extend the health service throughout the national territory and provide the necessary infrastructure to protect all the workers covered by the Convention.

Spain (ratification: 1932)

The Committee notes the Government's report. It also notes the comments on the application of the Convention, dated 30 September 1994, communicated by the General Union of Workers (UGT) and the Government's reply to them. Since the Government's communication was received only on 12 January 1995, the Committee decided to postpone examining these matters until its next session in November-December this year.

United Kingdom (ratification: 1931)

The Committee notes the Government's report. It also notes the comments made by the Trade Union Council on the application of this Convention communicated by the Government on 26 January 1995, as well as the Government's reply to them received on 2 February 1995. The Committee decided to examine this information at its next session in November-December this year.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Nicaragua, Romania*.

Convention No. 25: Sickness Insurance (Agriculture), 1927

Haiti (ratification: 1955)

See under Convention No. 24.

Peru (ratification: 1945)

See under Convention No. 24

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In addition, a request regarding certain points is being addressed directly to *Nicaragua*.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Austria (ratification: 1974)

With reference to the comments made by the Federal Chamber of Labour concerning the effects of the withdrawal of negotiation mandates by employers for collective agreements on the fixing of minimum wage rates, the Committee requests the Government to indicate the consequences of this withdrawal on the fixing of minimum wages.

In its report, the Government gives the following indications: (i) the obligations deriving from *Article 1 of the Convention* are fulfilled in Austria through a system of the minimum wage awards by a conciliation board in industries in which a collective agreement cannot be concluded because of the absence of employers' organizations with the mandate to conclude such agreements; (ii) collective agreements are the normal method used in practice for the fixing of wages; (iii) a large number of collective agreements are concluded by representative bodies of employers, of which membership is compulsory for all the employers in a sector; (iv) the issue of persons who are not covered by agreements is negligible in Austria; and (v) in sectors in which there are bodies representing both employers and workers which are capable of concluding collective agreements, no minimum wage awards can be adopted by the Conciliation Board. The Government adds that only a strike or other trade union action could overcome the unwillingness of employers to enter into negotiation for a collective agreement.

The Committee notes these statements. It recalls the explanations provided in paragraph 62 of its 1992 *General Survey on Minimum Wages*, according to which the creation or maintenance of methods for fixing minimum wages is not enough to comply with the obligations arising from the Convention, but it is also necessary to use these methods for the effective regulation of minimum wages.

In this respect, the Committee notes with interest the Government's statement that the law lays down that in sectors in which there are organizations of employers and workers capable of negotiating collectively, but where the employers do not wish to conclude collective agreements, a statement can be issued converting a collective agreement from one sector into a binding agreement for another sector. The Committee requests the Government to supply information on the use of the procedure of such declarations by the Central Conciliation Office in sectors where the employers have withdrawn their mandate to collectively negotiate the fixing of minimum wages.

China (ratification: 1930)

With reference to its previous comments, the Committee notes the information supplied by the Government, and particularly the adoption of the Regulations of 24 November 1993 respecting minimum wages in enterprises, and the discussion at the Conference Committee in 1994 concerning the application of the Convention. The Committee also notes the adoption of the Labour Law on 5 July 1994 and its coming into force on 1 January 1995.

Articles 1 and 3 of the Convention. The Committee notes that the Labour Law provides in section 48 for a minimum wage guarantee system. In accordance with this section, the minimum rates for wages shall be determined by provincial, autonomous, regional and municipal governments under direct central authority. Section 49 of the Law provides for the fixing and adjustment of the minimum rates of wages taking into account the following factors: (i) the average minimum expenditure needed for the subsistence of workers and their dependants; (ii) the average wage level in society; (iii) labour productivity; (iv) the employment situation; and (v) regional differences in the level of economic development. Furthermore, section 6 of the Regulations of 24 November 1993 provides for such levels to be fixed in consultation with the trade union and the association of enterprise managers at the corresponding level. The Committee notes with interest the legal framework established for the fixing of minimum wages under these provisions. It requests the Government to supply information on the minimum wage rates fixed in practice by the various local authorities and on the consultations held. Furthermore, the Committee requests the Government to provide information on the measures adopted by the Labour Administration Department of the State Council under section 25 of the Regulations to ensure that the provisions of the Regulations are given effect by the local authority, including its provisions respecting consultation.

Article 4. The Committee notes with interest that sections 91(3) and 95 of the Law stipulate that the payment of wages which are lower than the local minimum wage is an infringement of the legitimate rights and interests of the workers, punishable by the applicable fines. It requests the Government to indicate the amounts of these fines and the legal provisions prescribing them.

The Committee also notes that the Regulations provide for machinery to guarantee and supervise minimum wages, under which the Labour Administration Department of the people's governments at the various levels are responsible for the inspection and supervision of the application of minimum wages (section 22 of the Regulations) and, in the event of the payment of a wage that is lower than the minimum rate, are responsible for ensuring the payment by the enterprise of the remaining wages owed and the prescribed compensation (section 27).

The Committee requests the Government to provide full information on the manner in which minimum wage rates are applied, including the consultations held, the results of the inspection of their application, the sanctions imposed and cases in which compensation has been paid to workers under section 27 of the Regulations.

Article 5. The Committee requests the Government to provide the available statistics on the number and different categories of workers covered by the Regulations respecting minimum wages.

Costa Rica (ratification: 1972)

The Committee requests the Government to refer to the observation made under Convention No. 131.

Dominican Republic (ratification: 1956)

The Committee notes the observations of the Employers' Confederation of the Dominican Republic on the application of the Convention and the Government's comments on them.

Referring to a Bill to lead to an overall increase of 30 per cent in wages in the public sector and in the private sector, the above Confederation alleges: (i) that the minimum wage fixing machinery contained in the national legislation, in accordance with the Convention, was not applied; and (ii) that employers were not consulted in fixing minimum wages, as required by the Convention. The above Confederation has informed the President of the Senate of this breach of the law and has asked that the Senate Finance Committee reject the Bill.

By a letter of 23 January 1994 the Government pointed out that: (i) the Bill was presented by a senator from the opposition; (ii) the Bill has not yet been examined although it has been endorsed by the Senate Labour Committee; (iii) in accordance with the Constitution, the Executive is empowered to make observations on any law enacted by Congress if it deems it to be inconsistent with the Constitution or ratified treaties. The Government therefore considers that the comments of the Employers' Confederation of the Dominican Republic to be premature.

The Committee takes note of this information. It notes that the Bill, which originated in Parliament, has not been adopted and that, consequently, the Government may still present it to the employers and workers concerned with a view to consulting them, amongst other things to ascertain whether or not the Bill will contribute to securing an effective system for fixing minimum wages. It recalls that the minimum wage fixing machinery provided for in the Convention is of a subsidiary nature to the extent that it is mandatory only where "no arrangements exist for the effective regulation of wages by collective agreement or otherwise".

The Committee also recalls that tripartism and tripartite consultations on matters of common interest are fundamental principles of the ILO and that governments of member States have the obligation, as need be, to enter into tripartite consultations.

The Committee asks the Government to indicate the action taken by Congress on the above Bill and the measures taken to ensure that employers' and workers' organizations are consulted with regard to minimum wage fixing in accordance with the Convention.

India (ratification: 1955)

With reference to its previous comments, the Committee notes the Government's report and the attached observations of the United Trade Union Centre (UTUC) and the All India Organization of Employers (AIOE).

1. In connection with the observations made previously by the Hind Mazdoor Sabha (HMS) workers' organization, regarding the actual fixation of regional minimum wages, the Government indicates that the Regional Minimum Wages Advisory Committee concluded that, due to the varying socio-economic conditions in different states, fixing of uniform minimum wage even on regional basis was not feasible. It adds that the respective authorities in a region should endeavour to reduce disparities in minimum wages over a period of time. According to the Government, ten states or union territories have resorted to the fixation of variable minimum wages according to different geographical zones, which are not more than four, within the same state. The Committee takes due note of these indications and also of the information attached to the report on the number of scheduled employments for which minimum wages have been fixed.

As regards the HMS's comment on the application of the minimum wage to homeworkers, the Committee notes the Government's indication that, although the provisions of the Minimum Wages Act, 1948, are not specifically aimed at covering homeworkers, the homeworker engaged in any of the above-mentioned scheduled employments is governed by its provisions.

The Committee requests the Government to continue to provide information on the results of the application of the minimum wage fixing machinery in accordance with *Article 5 of the Convention*, including the indication of the approximate numbers of workers covered and the minimum rates of wages fixed.

As to the implementation of the minimum wages in practice, on which the HMS also commented, the Committee notes the Government's indication that the central as well as the state governments are the appropriate authorities for the enforcement of relevant provisions in their respective jurisdictions. It hopes that the Government will continue to indicate measures taken, by the central or the state governments, to ensure better application of the law on minimum wages in the entire territory, with particular reference to homeworkers.

2. In connection with the comments made previously by the Bharatiya Mazdoor Sangh (BMS) workers' organization, the Committee notes the Government's statement that various proposals to amend the Minimum Wages Act are under active consideration of the Government, and requests the Government to indicate any development in this regard.

3. The Committee is also addressing a direct request to the Government on certain points, including the observations made by UTUC and AIOE.

Paraguay (ratification: 1964)

The Committee notes that the Governing Body at its 261st Session (November 1994) entrusted to a tripartite committee, the examination of a representation made by the Latin American Central of Workers (CLAT), under article 24 of the Constitution, alleging non-compliance by Paraguay with Convention No. 26 on minimum wage fixing machinery.

In accordance with normal practice, the Committee is postponing its comments on the application of the Convention pending the Governing Body's adoption of the conclusions and recommendations of the above committee.

Turkey (ratification: 1975)

1. The Committee notes the observations made by the Confederation of Trade Unions of Turkey (TURK-IS). TURK-IS points out that homeworkers are excluded from the scope of the Labour Act No. 1475 and the minimum wage fixing machinery, while the Convention clearly covers "home working trades" *(Article 1 of the Convention)*. Recalling that the Government has not replied to its previous direct requests on this question, the Committee again requests the Government to indicate the texts which regulate conditions of homeworkers, and the measures taken to fix the minimum wages for them.

The Committee also notes that, according to TURK-IS, the amount of fine to be imposed in the case of non-payment of the minimum wage is only TL500,000 (about US$15), which is less than a quarter of the monthly minimum wage. It asks the Government to provide information on any measures taken in accordance with *Article 4* to ensure the enforcement of the minimum wage.

2. In its previous observation, the Committee noted the observations made by the Turkish Confederation of Employers' Associations (TISK). The TISK stated that the rate of increase of the minimum wage had been above the rate of increase in consumer prices. It also expressed dissatisfaction with the factors taken into account at the latest adjustment of the minimum wage which took effect on 1 August 1992. The Committee would be grateful if the Government would indicate the means by which the employers and workers concerned are associated in the operation of the minimum wage fixing machinery in accordance with *Article 3, paragraph 2(2), of the Convention*.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Bahamas, Central African Republic, Chile, Dominica, Dominican Republic, Ghana, Grenada, Guinea-Bissau, India, Slovakia, Solomon Islands, Sudan, Turkey***.

Information supplied by *Belize* and *Seychelles* in answer to a direct request has been noted by the Committee.

Convention No. 27: Marking of Weight (Packages Transported by Vessels), 1929

A request regarding certain points is being addressed directly to *France*.

Convention No. 29: Forced Labour, 1930

Bulgaria (ratification: 1932)

The Committee notes with interest the information supplied by the Government in its report in reply to earlier comments. It notes that the Government will report on the enactment of the Armed Forces Bill as soon as it is voted by Parliament. Recalling the Government's indication in its report received in 1992 that the Bill will take into account all comments made by the Committee under the Convention, the Committee hopes that the new legislation will ensure:

1. the limitation of compulsory military service to work of a purely military character so that enrolment in units such as the Construction Corps will be reserved to volunteers; and
2. the right of all career members of the armed forces, including officers and non-commissioned officers, to leave the service in time of peace on their own initiative after a reasonable period of service, by giving notice or at specified intervals. The Committee looks forward to communication of the provisions adopted to this end.

Central African Republic (ratification: 1960)

1. In its comments, the Committee has been referring for many years to the Government's statement that draft ordinances have been drawn up with a view to repealing Ordinance No. 66/004 of 8 January 1966, respecting the suppression of idleness (as amended by Ordinance No. 72/083 of 18 October 1972), section 11 of Ordinance 66/038 of 3 June 1966, respecting the supervision of the active population, and sections 2 and 6 of Ordinance No. 75/005 of 5 January 1975, making the performance of commercial, agricultural and pastoral activities compulsory. The Government indicated that the Ordinances in question had become obsolete and are no longer applicable, and that the draft texts to repeal them formally were to be submitted to an expanded committee of the social partners. The Government also stated that it was aware of the need to bring its legislation and practice into conformity with international labour Conventions.

The Committee noted the information supplied by the Government in its report for the period up to June 1992, to the effect that a Bill had been introduced for the repeal of Ordinance No. 66/004 of 8 January 1966, respecting the suppression of idleness.

The Committee noted this information. In view of the fact that the Government had been referring to texts to repeal the above Ordinances for many years, the Committee expressed the hope that the Government would supply the text of the Bill to repeal Ordinance No. 66/004 of 8 January 1966, respecting the suppression of idleness, when adopted, and that it would supply information on the other amendments required to give effect to the Convention on these points.

2. In its previous observations, the Committee also referred to section 28 of Act No. 60/109, respecting the development of the rural economy, which provides that minimum surfaces for cultivation shall be fixed for each rural community.

The Committee noted the Government's indications that these provisions were intended to supply a technical framework and basic services to farmers in order to increase their production, improve their standard of living, and encourage them to expand the areas under cultivation and increase efforts in agricultural activities, since the freedom to work must not mean the freedom to do nothing. The Committee pointed out that the Convention authorizes recourse to compulsory cultivation only for the prevention of famine or a food deficit, and always under the condition that the food remains the property of the producers. It also pointed out that any work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily is incompatible with the Convention.

The Committee notes that the Government's last report does not contain a reply to the above comments. It hopes that full information will be supplied in the near future.

Chad (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

> In comments it has been making for many years, the Committee has drawn attention to certain provisions that are contrary to the Convention and section 5 of the Labour Code, namely:
>
> - section 260 bis of the General Code of Direct Taxes (Act No. 28-62 of 28 December 1962) empowering the authorities to exact labour for the recovery of taxes;
> - section 2 of Act No. 14 of 13 November 1959 empowering the authorities to exact forced labour for work of public interest from persons subjected to restrictions as to residence, following completion of a sentence;
> - section 7, paragraph 4, of Ordinance No. 2 of 27 May 1961 on the organization and recruitment of the armed forces, and sections 3 and 4 of Decree No. 9 of 6 January 1962 on the recruitment of the army, providing for the assignment of conscripts to work of general interest.
>
> The Committee noted the Government's statement in its report for the period ending 30 June 1991 that section 260 bis of the General Code of Direct Taxes was to be repealed by the Finance Act of 1992. It requested the Government to provide a copy of the Finance Act as adopted. The Committee also noted the Government's indications that, with regard to the other texts referred to above, it had been decided that the various ministerial departments were to be responsible for repealing or amending the texts falling within their competence.
>
> The Committee once again expresses the hope that the Government will shortly be able to report that progress has been made in this respect and that it will provide a copy of the texts adopted.

Colombia (ratification: 1969)

Article 2, paragraph 2(c). Prison labour. In the comments that it has been making for a number of years the Committee has referred to Decree No. 18-17 of 1964 (the Prison Code), which imposes compulsory labour not only on persons who have been convicted (section 269), but on all detainees except those declared medically unfit (section 233). The Committee notes with satisfaction that the adoption of section 79 of the Prison and Penitentiary Code (Act No. 65 of 1993) which provides for an obligation to work in prison establishments only for persons who have been convicted.

Work for private enterprises. In its previous comments on the work undertaken by prisoners for private individuals and enterprises, the Committee indicated that such a labour relationship may be compatible with the Convention in so far as it may be regarded as a free employment relationship, that is to say, if those concerned have freely given their consent, provided that there are appropriate guarantees, such as the payment of normal wages, social security, etc.

The Committee notes that section 84 of the Prison Code referred to above provides that the work contract cannot be concluded between the prisoner and private individuals, who have to conclude it with the administration of each prison centre or with the company "***Renacimiento***" (a mixed economy company which is to be established by virtue of section 90 of the above Code for the purpose of producing and marketing goods and services produced in prison centres, in which the national Government will hold more than 50 per cent of the share capital). Section 84 provides that "work may be undertaken in prison centres by order of the director of the establishment to the prisoners ...". Section 87 empowers the director of each establishment to "conclude agreements or contracts with public or private law persons or entities ... with a view to assuring work ...".

With regard to the work undertaken by prisoners for private enterprises, whether or not they are profit-making, the Committee notes that the Code contains no provisions establishing that prisoners must be able to give their consent freely to the relationship, in accordance with the Convention.

The Committee notes the agreements concluded (before the adoption of the new Prison and Penitentiary Code) between a number of private enterprises and prison establishments, which were supplied by the Government. The Committee notes that the remuneration agreed between prison centres and private entities is from 20 to 50 per cent less than the statutory minimum wage. In one case, the remuneration envisaged corresponded to the statutory minimum wage. The Committee considers that in cases in which remuneration is not only lower, but considerably lower (50 per cent) than the statutory minimum wage, the relationship clearly cannot be regarded as a free employment relationship and requests the Government to take the necessary measures to ensure that the remuneration conditions of prisoners who work for private enterprises are similar to those of free workers.

The Committee requests the Government to supply information on the application in practice of the provisions respecting work by convicted persons, and particularly the measures established to ensure that they freely give their consent to work for private enterprises. The Committee also requests the Government to supply a copy of the regulations adopted under section 86 of the Prison Code, which determine the social protection of prisoners, and to provide information on the operation of the mixed economy company "***Renacimiento***" (section 90 of the above Code).

France (ratification: 1937)

Article 2, paragraph 2(c), of the Convention. In its previous observation, the Committee referred to the conditions under which prison labour for private enterprises could be considered as a free work relationship and thus avoid the prohibition of Article 2, paragraph 2(c), of the Convention. The Committee has taken note of section 720 of the Code of Criminal Procedure, as amended in 1987, according to which penitentiaries will take all necessary measures to provide work for inmates who so desire. It was also noted that employment relationships for prisoners (other than prisoners on semi-release), are not covered by an employment contract (section 720, paragraph 3). The Committee also referred to the level of remuneration paid to prisoners under concessionary agreements and in prison industries.

The Committee notes the comments of the French Democratic Confederation of Labour (CFDT) on the application of Convention No. 105 presented by the Government in December 1994. According to the CFDT, the attribution and withdrawal of prisoners' work assignments depends primarily on the attitude of the prison authorities and not particularly according to the wishes of the prisoners. The CFDT alleges that prison labour, which is no longer compulsory, cannot become a privilege granted and sometimes withdrawn from prisoners as a punishment, and that this presupposes a specific procedure for attributing work assignments and the setting of contractual labour relations according to clear and serious bases. The CFDT further adds that a contractual document should state the terms of employment and remuneration, and that withdrawal of the authorization should be subject to procedural safeguards, including notice to the prisoner, and that only when such conditions are met can one speak of free consent to work.

In its last report, the Government indicates that prisoners are not required to work but may do so if they wish, while restating that prisoners are always paid for their work, and that their remuneration is always set with reference to the legal minimum wage for free labour (SMIC), and that in this framework remuneration takes into account the productivity of a prisoner in comparison with a free labourer performing the same work. The Government further notes that wages are subject to both employer and employee social contributions (withholding) and that prisoners have old-age, sickness, maternity, accident and widow/widower insurance. It is further noted that work in workshops must comply with health and safety regulations for free workers.

The Committee recalled in its previous observation that only work performed under free employment relations, i.e. with the prisoner's consent accompanied by guarantees concerning wages and social welfare, is not within the scope of the text of the Convention.

Prisoner consent. The Committee observes that the law of 22 June 1987 amending section 720 of the Code of Criminal Procedure made prison labour voluntary; however, according to the same law, both work and professional training are factors in assessing a convict's good behaviour and reinsertion potential. The Committee notes that under section 721 of the Code of Criminal Procedure, a reduction of sentence can be granted to prisoners for good behaviour. This assessment, which is to be made by the judge charged with following up the implementation of sentences, as provided under article D.253 of the Code of Criminal Procedure, is based on the prisoner's overall behaviour, but also on his assiduousness at work. The Committee requests that the Government indicate the measures taken to ensure that the prisoner's consent cannot be vitiated by the fact that a favourable assessment implies assiduousness at work. In private prisons there are two interrelated forms of constraint: first, the private enterprise operating the prison includes prison labour in its profit calculations and, second, the private enterprise is not only a user of prison labour, but also retains, both in law and in practice, a large part of the authority which belongs to the prison administration.

Employment contract. The Committee observes that under section 720, paragraph 3, of the Code of Criminal Procedure, the employment relationships of incarcerated persons are not covered by employment contracts. Section D.103 of the aforementioned Code excludes employment contracts in the relations between the prison administration and the detainee, for whom the administration obtains work, and between the concessionary enterprise and the prisoner, who is placed at its disposal as provided in an administrative agreement setting, in particular, the wages and working conditions. The prisoner at work is then a worker deprived of a contract and labour protection. Considering that in the case of private prisons the prison administration is, in law or in practice, in the hands of the enterprise using prison labour, the Committee requests that the Government examine the terms of sections 720, paragraph 3, and D.103 of the Code of Criminal Procedure and take necessary measures so that labour relations and conditions of employmet of prisoners are governed by labour law and subject to labour inspection.

Remuneration. With regard to remuneration, in its previous observation the Committee requested that the Government provide detailed information on changes in the remuneration of prisoners employed by private enterprises, whose "minimum prison wage" was set at 50-60 per cent of the normal minimum hourly wage, according to the regime. The Committee had also noted that the Government was aware of the inadequate level of remuneration, the difficulties of low inmate productivity and the low level of skills of the prison population.

The Committee requests that the Government re-examine the level of remuneration according to different regimes, and to indicate all measures taken or envisaged so that the national minimum wage (SMIC) applies to prisoners working for private firms.

Free employment relationship in private prisons. The Committee has noted that, by agreement, the construction and management of prisons had been put into the hands of private enterprises in the context of "Programme 13,000" (recourse to private capital to build and manage prisons). The Committee notes that "work" is part of the responsibilities given to private management in these prisons. The Committee requests that the Government provide information as to legal regulations applicable to private prisons and on the conditions under which the prisoner is subjected to this "private operator". Such information will help to determine whether, as concerns employment, a relationship similar to that of a free worker can be established.

Gabon (ratification: 1960)

The Committee notes that no report has been received from the Government. The Committee has, however, taken note of a letter dated 6 October 1994, sent to the Government by the Confederation of Free Trade Unions of Gabon (CGSL) with comments on the observance of the Convention.

Article 2, paragraph 2(c), of the Convention. In its previous comments, the Committee noted that prison labour is compulsory for all convicts, under penalty of sanctions, under section 3 of Act No. 22/84 of 29 December 1984 to organize prison labour. Under section 4, this labour includes both inside and outside work and the hiring of prisoners to private individuals or associations is allowed for outside work, provided that prison labour does not compete with free labour. The Committee drew the Government's attention to the fact that Article 2, paragraph 2(c), of the Convention prohibits convicts from being placed at the disposal of individuals, companies or associations.

The Committee also noted the comments of the Confederation of Free Trade Unions of Gabon (CGSL) alleging that detainees awaiting trial, for the most part clandestine immigrants, are subjected to occasional forced labour. The Committee noted the Government's statement that what the CGSL alleged was neither current practice nor occasional practice. According to the Government, certain prisoners, to earn savings, voluntarily accept small jobs in their trade (masonry, carpentry, etc.) for private individuals who request such work and pay them for it. The Government also indicated that the same principle of remuneration applies in cases of imprisonment for debt, which are rare and are defined in the Penal Code and the Code of Civil Procedure; in such cases the persons concerned have already been sentenced and are therefore no longer awaiting trial; this remuneration enables prisoners to repay their debts more easily. The Government also referred to the prohibition on forced labour contained in the Labour Code which is currently in force and in the draft new Labour Code.

With reference to paragraphs 89-96 of its 1979 *General Survey on the Abolition of Forced Labour*, the Committee recalled that prison labour falls outside the scope of the

Convention only if it is imposed as a consequence of a conviction pronounced in a court of law; persons who are in detention but who have not been convicted must not be obliged to perform labour. In the case of prisoners who have been sentenced, only work carried out in conditions of a free employment relationship can be held not to be incompatible with the prohibition set out in Article 2, paragraph 2(c), of the Convention, which necessarily requires the formal consent of the person concerned and, in the light of the circumstances of that consent, guarantees and safeguards in respect of wages and social security that are such as to justify the labour relationship being regarded as a free one.

The Committee noted that in a communication dated 21 September 1993, the Trade Union Confederation of Gabon (CO.SY.GA.) stated that the safeguard of obtaining the formal consent of the persons concerned remained to be proven. It notes that in its comments of 6 October 1994, the CGSL welcomes the progress made over the last two years regarding the use of penal labour but considers that formal consent of those concerned and their social protection remain to be proven.

The Committee hopes that the Government will indicate the measures that have been taken or are envisaged to guarantee that the formal consent of the person concerned is obtained for any work which is performed for private individuals or associations and that it will provide information on remuneration and social protection. The Committee also notes the Office's comments concerning the provisions relating to the prohibition of forced labour contained in the draft new Labour Code and hopes that the provisions to be adopted will be in accordance with the Convention on this point.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Haiti (ratification: 1958)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following point:

> In its previous observation the Committee referred to the report on children's rights in Haiti, prepared by the Minnesota Lawyers International Human Rights Committee in February 1989 and submitted to the Working Group on Contemporary Forms of Slavery of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1989 by an observer of the International Human Rights Internship Programme. The report refers to the use of children as servants, known in Creole as "restavek" from the French "rester avec" or "to stay with". Many poor families are alleged to be selling their children to urban families to work as domestics in conditions which are not unlike servitude. The children were forced to work long hours, with little chance for bettering their conditions; many children were reported to have been physically or sexually abused. Some of the girls who were "sold" as domestics at a young age did not know their family name or where their family lived and, thus, were unable to return to their homes. Many of the children presently living in the streets of Port-of-Prince had fled restavek situations, preferring a life without shelter or food to a life of servitude and abuse. The practice of restavek was openly compared to slavery in Haiti.
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> In presenting the report, the observer also alleged that while there were exceptions, the restavek children were very rarely treated like adoptive members of the restavek family. Usually there was a clear distinction between a restavek family's natural children and the restavek child, with the restavek children taking orders from the other children. Restavek children were not fed the same food as the restavek family, worked long hours for no pay both inside and outside the home and often were not housed in the main dwelling, but in a separate shed or shade. Few were sent to school or otherwise educated. If a runaway was found by the restavek family, the child could be forced to return.

The Committee had noted these allegations. It also had taken note of sections 341 to 355 of the Labour Code of Haiti which contain detailed provisions for the protection of children employed as domestic servants and prohibit such employment of children below the age of 12.

The Committee had asked the Government to supply information on all measures taken to ensure the observance of the provisions of sections 341 to 355 of the Labour Code, including data on the action of the Social Welfare and Research Institute (IBESR), municipal authorities and the labour courts.

The Committee notes that in its report for 1992 the Government indicates that it is not, at present, in a position to supply to the ILO the information requested and that it undertakes to perform a full inquiry into conditions of work in general.

The Committee hopes that the Government will soon provide the information requested.

India (ratification: 1954)

1. Further to the discussion that took place on the problem of bonded labour in India at the Conference Committee in 1994, the Committee has taken note of the detailed reports supplied by the Government in June 1994 and February 1995 on the application of the Convention.

2. In previous comments the Committee noted that over the years since the authorities of India took the decision to abolish the bonded labour system in 1976 and the Supreme Court adopted its landmark decision in 1983, the situation in practice did not appear to have improved very much, and a number of proposals and recommendations made by the National Commission on Rural Labour in 1991 with a view to improving the situation had not so far been implemented.

3. The Committee noted the statement made by a Government representative to the Conference Committee in 1993 that a high level of awareness already existed in India about the problem of bonded labour and the Government was making every possible effort to eradicate it. In 1994, the Conference Committee noted that, notwithstanding the efforts made, much remained to be done to overcome the problems already discussed in the course of many earlier sessions concerning, in particular, the identification, liberation and rehabilitation of persons in bonded labour, including children, as well as in particular the introduction of an efficient enforcement system. In this regard, the Conference Committee remained very deeply concerned by the situation.

Identification of bonded labourers and magnitude of the problem

4. *Diverging estimates*. The Committee previously noted that there exists no comprehensive survey of the magnitude of the problem. One survey conducted in 1978-79 under the joint auspices of the Gandhi Peace Foundation (GPF) and the National Labour Institute (NLI) covering 10 out of 21 states, but only the traditional areas, estimated the number of bonded labourers at 2.6 million; a report by the Subcommission on Bonded Labour set up by the Central Standing Committee on Rural Unorganized Labour referred in 1979 to some 2 million bonded labourers in the rural sector. In 1980, nine state governments gave an estimate of about 0.12 million bonded labourers, while in 1990 this number rose to 0.24 million in 12 states. The Bonded Liberation Front of India has put forward the figure of some 5 million adult and 10 million child bonded labourers.

5. *1992 government instructions*. In its statement to the Conference Committee in 1992, the Government referred to difficulties in the collection of information from various state governments. Noting that the identification of bonded labourers was mainly

undertaken by the Revenue Departments and the Block Development Officers of the state governments, it indicated that according to statistics available as of 31 March 1991, the total number of identified bonded labourers was 255,608, out of which 222,985 had been rehabilitated. In order to accelerate the process of identification, the central Government had issued circular instructions to the various state governments highlighting the need for undertaking from time to time fresh efforts for identification. It suggested the following steps:

(a) household surveys should be conducted by the Revenue Department with the help of field agencies like the Directorate of Economics and Statistics, Zonal Directorate of Backward Classes' Welfare and similar agencies on the lines of the survey drawn up by the National Sample Survey Organization in their 32nd round;

(b) identification should be done during censuses conducted for the allotment of house sites under the IRDP;

(c) intensive studies should be undertaken in stone quarries and brick kilns.

In view of this, the chief secretaries of all concerned state governments had been addressed by the Union Labour Secretary in the matter of taking vigorous steps for the identification and rehabilitation of bonded labourers on 7 February 1992, and a system of quarterly monitoring had been introduced.

6. In 1993, the Committee, while noting that in its report for the period ending 30 June 1985, the Government already referred to the same kind of measures, expressed the hope that the Government would provide detailed information on the results achieved following these instructions, in particular on any noticeable increase in the number of bonded labourers identified and rehabilitated; on measures taken at state level and reported to the central Government; and on any new assessment of the situation made by the central Government.

7. *Definition to be used.* The Committee observed, however, that the report by the Commission on Rural Labour indicated that the definition of bonded labour adopted by the National Sample Survey Organization (32nd round, 1977-78) was restrictive, not encompassing fully the definition of the Act, though covering traditional and non-traditional areas. The Committee expressed the hope that any household survey conducted, as well as the censuses and studies to be made, would take into consideration the full definition of the Bonded Labour System (Abolition) Act, 1976, as interpreted by the Supreme Court of India in 1983 and with the amendments adopted in 1985. It requested the Government to provide information in this regard, including any instructions issued to this effect.

8. *Absence of follow-up to 1992 government instructions.* The Committee notes from the Government's statement to the Conference Committee in 1993 that work to be undertaken by the National Sample Survey Organization (NSSO) on the proposition of the Ministry of Labour to gather information on bonded labour is not scheduled before 1998-99. With its report received in June 1994, the Government has supplied a statement on the number of bonded labourers identified, released and rehabilitated in 12 states as at 31 March 1993, and the tentative rehabilitation targets fixed for 1993-94. The total numbers were given as 251,069 identified and released and 224,074 rehabilitated, i.e. for some reason 1 per cent less identified than two years before and 1 per cent more rehabilitated (with a tentative target for rehabilitation during 1993-94 of 2,179 labourers in seven states). No information was given on methodology or definition used, nor on any follow-up of the above-mentioned instructions issued by the central Government in February 1992.

9. *Further preliminary discussions.* In the same report, the Government indicated that on 15 April 1993, in a meeting held by the Minister of State for Labour with the Labour Secretaries of the states in which the problem of bonded labour is endemic, it was decided to constitute a Committee comprising labour secretaries of five states to study and recommend a workable definition of bonded labour and the modalities and procedure for their identification. At this meeting, it was agreed that all the state governments will conduct a fresh survey for the purpose of identifying bonded labour in their respective states. While conducting the survey, the recommendations of the above Committee appointed to evolve a workable definition of bonded labour will be borne in mind. It was also agreed that all the states should endeavour to complete the survey by September 1993. Two meetings of the Committee of Labour Secretaries have been held on 18 June and 23 July 1993, where the methodology for identification and rehabilitation of bonded labourers in different states and the difficulties faced by them were discussed. The Committee was unanimous on the adoption of a simple workable definition of bonded labour. The Committee's term has been extended, and the Government has indicated in its report received in February 1995 that the Committee's report has been received by the Government of India and is under consultation with the state governments. It was not supplied to the ILO. The Government adds that during September-October 1994, the Labour Minister held three separate conferences with 15 state labour ministers, which have recommended that states will undertake surveys to identify bonded labourers as may be in existence despite the Bonded Labour System (Abolition) Act, 1976. These surveys were to be completed within a period of six months. The states were also selectively to undertake follow-up studies to assess if any of the rehabilitated bonded labourers had since relapsed into bondage.

10. The Government further indicates that some Members of Parliament have pointed to the incidence of bonded labour in Dehradun region of the state of Uttar Pradesh. The state government of Uttar Pradesh has denied any fresh incidence of the problem. To ascertain the existence of bonded labour, if any, in the Dehradun area, the Lal Bahadur Shastri National Academy of Administration Mussoorie has agreed to conduct a survey.

11. *Continued absence of progress.* The Committee has taken due note of these indications. It notes that none of the state-wide surveys repeatedly announced by the Government, with deadlines past, appear so far to have been undertaken by the state governments, and that the state labour ministers apparently decided not to use the definition of the Bonded Labour System (Abolition) Act, 1976, as interpreted by the Supreme Court of India in 1983 and with the amendments adopted in 1985, but a "simple workable" one, which has not been communicated to the ILO.

12. *Occupations to be surveyed.* In its 1994 observation, the Committee also noted from the report by the National Commission on Rural Labour that in the following non-agricultural occupations bonded labour elements have been noticed but have not been adequately covered by surveys and studies: stone quarries, migrant labourers, brick kilns, Joginis and Devadasis, fishermen, building and road construction labour, forest labour, bidi workers, carpet weavers, potters, weavers, head loaders, child labour in match and fireworks industries, etc. The Committee requested the Government to provide information on any studies or surveys made in these activities and on the number of bonded labourers identified, released and rehabilitated.

13. *Case-studies. Haryana quarries: the Government's views.* The Government has supplied in February 1995 a copy of the report dated 30 March 1993 of the Subcommittee on Elimination of Child Labour in the Match and Fireworks Industries in Tamil Nadu, and in June 1994, a copy of the report of the Committee appointed by the

Supreme Court by its Order dated 21 February 1991 to investigate the issue of identifying bonded labourers in the State of Haryana (the Supreme Court had disposed of the main matter, i.e. the Writ Petition No. 2135/1982 *Bandhua Mukti Morcha* v. *the Union of India*, by its judgement dated 16 December 1983). In commenting on the report of that Committee, the Government, in its report received in June 1994, refers to the Committee's assessment of 2,000 workers employed in the stone quarries of Faridabad district, and alleges that while the Committee made critical references to the unsatisfactory working conditions in the quarries and disputes concerning minimum wages paid to the workers, it has not considered these workers as bonded labourers; in its latest report the Government adds that "the outcome of this case, involving one of the most active NGOs in the field of bonded labour, reveals that, though well-intentioned, their claims/complaints can be highly exaggerated".

14. *Haryana quarries: irrelevance of government figures.* These contentions are not borne out by the conclusions made by the Committee appointed by the Supreme Court. That Committee noted that while a report submitted by the Government of Haryana stated that the number of bonded labourers was 544, of which the number rehabilitated was 21 as on 30 November 1990, these figures related to the bonded labourers identified all over Haryana and mostly covering brick kilns, while the petitioner was referring to the issue of only the workers of the stone quarry of the district Faridabad; for that alone, the number of persons in the original list supplied by the petitioner was 2,800, out of which 1,983 were then identified; the final list of 2,000 persons, prepared by the Committee, includes some persons who were not on the original list. In addition, it is the estimate of the Committee that some 200 persons have been left out of the final list who were not available for identification, either out of fear of the contractor or because they had gone out the day of the Committee's visit.

15. *Criteria for identification.* The Committee appointed by the Supreme Court adopted the following criteria for identification:

> Article 23 of the Constitution of India which prohibits trafficking in human beings and forced labour.
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> The definitions of "Bonded Labour System" in section 2(g) of the Bonded Labour System (Abolition) Act, 1976, the definitions of bonded debt in section 2(d), "Bonded Labour" in section 2(e), "Bonded Labourers" in section 2(f), "Nominal Wages" in section 2(i) and other principles laid down in the said Act.
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> The various principles laid down by the Supreme Court on the Concept of forced labour under Article 23, and its relationship with wage in the *People's Union for Democratic Rights* v. *the Union of India*, 1982 (8) SCC 235 and *Bandhua Mukti Morcha* v. *the Union of India* 1984 (3) SCC 161 (thereinafter referred to as the PUDR judgement and the Bonded Labour judgement respectively).

A legal note was prepared to aid the Committee in summarizing all the principles above and the conclusions which emerged from the same were:

(a) any form of forced labour which includes bonded labour is prohibited under article 23 of the Constitution and any contravention of the provision, which is enforceable against the State and any individual, is an offence (PUDR judgement);

(b) the Bonded Labour System (Abolition) Act, 1976, has been enacted with a view to giving effect to article 23 (Bonded Labour judgement);

(c) every form of forced labour is within the inhibition of article 23 and it makes no difference whether the person who is forced to give his labour to another is remunerated or not (PUDR judgement);

(d) "force" is mere legal or physical force but includes force arising from compulsion or economic circumstances which leaves no choice or alternative to a person and compels him to work for less than the minimum wage (PUDR judgement);

(e) where a person provides labour or services for less than the minimum wage, the labour or service provided by him is clearly within the scope and ambit of "forced labour" under article 23 (PUDR judgement);

(f) whenever it is shown that a labourer is made to provide forced labour, the presumption would be that he is required to do so for economic consideration received by him and he is therefore a bonded labourer (Bonded Labour judgement).

16. *Haryana quarries: role of wage structure.* The Committee appointed by the Supreme Court has applied all the aforesaid criteria for identification of persons in the petitioners list as well as for fresh cases or cases left out earlier. In its conclusions, the Committee noted that the Supreme Court has held in the PUDR judgement, inter alia, that where a person provides labour or services for less than the minimum wage, the labour or service provided by him is clearly within the scope of "forced labour" under article 23 of the Constitution. The Supreme Court has held in the Bonded Labour judgement that whenever it is shown that a labourer is made to provide forced labour, the presumption would be that he is required to do so for economic consideration received by him and he is therefore a bonded labourer. The Supreme Court, in its Bonded Labour judgement, has also directed as part of the now well-known 21 directives, inter alia, that all necessary steps be taken to ensure the payment of the stipulated wages to the workers (directives 5, 6 and 8). The Committee has, therefore, laid some emphasis on the wage structure which was clearly identifiable for the purpose of including the workers for the benefits available to them under the Bonded Labour System (Abolition) Act, 1976. Other criteria like indebtedness or being able to change contractors were varying criteria and were not necessarily constant.

17. *Action called for.* The Committee hopes that the necessary measures will soon be taken at the national and state levels for the systematic identification of bonded labourers under the Bonded Labour System (Abolition) Act, 1976, now stalled in practice for several years, and that the Government will supply information on action taken pursuant to its instructions of 1992 and on concrete results, bearing in mind also the indications by the National Commission on Rural Labour on occupations that have not been adequately covered by surveys or studies.

Role of vigilance committees

18. In previous comments, the Committee asked for information on the functioning of vigilance committees and on the effective implementation of the competences entrusted to them by the Bonded Labour System (Abolition) Act 1976, for the identification, liberation and rehabilitation of bonded labourers. The Government has forwarded specific information made available by ten state Governments on the numbers of vigilance committees constituted in districts and subdivisions, with some indications on their composition and activities. In its report received in June 1994, the Government indicated that the central Government does not directly monitor the functioning of the vigilance committees at present, and that the central Government has not received any proposal from the state Governments to improve the functioning of the vigilance committees. In February 1995, the Government added that the vigilance committees have been constituted in all the states where the problem of bonded labour is considered to be endemic, and the Government considers that over the years, the achievements of the vigilance committees in undertaking identification and rehabilitation of a very large

number of bonded labourers who are very widely dispersed in rural and interior areas, are proof of their effective functioning.

19. The Committee considers that this appreciation is not borne out by the statistics supplied by the Government for the last years, mentioned in point 8 above. In its report published in 1991, the National Commission on Rural Labour indicated that, while a few vigilance committees had been doing good work, most of them had not been constituted or reconstituted or had not been active as meetings were not held regularly. There had been no monitoring of the functioning of these committees and in the last few years fresh identification of bonded labourers had almost stopped. The Committee notes that this is still so, although vigilance committees at present exist at the district and subdivision levels in a number of states. As indicated by the National Commission, it appears necessary to activate the vigilance committees with the composition as prescribed. In addition, the involvement of voluntary agencies and the setting up of a national authority on bonded labour, as recommended by the National Commission on Rural Labour in 1991 may help in making vigilance committees accountable and accelerating the process of identification, release and rehabilitation of bonded labourers.

Involvement of voluntary agencies

20. In previous comments, the Committee asked the Government to provide information on the operation of the scheme for the involvement of voluntary agencies in the identification and rehabilitation of bonded labourers. In its reports received in June 1994 and February 1995, the Government has provided the names of ten voluntary agencies operating, mostly at the level of one or two districts, in six states, and information received from eight of the state governments regarding the activities of voluntary agencies. In Bihar, Antyodaya Ashram of Santhal Pargana and T. Chakkalakar of Rampura Ashram have helped to identify 2,662 bonded labourers in Dumka district and 317 in Bettiah district respectively. In Tamil Nadu, the Organization for Rehabilitation and Development of Bonded Labourers, Madras, has conducted a survey on the rehabilitation of Tamil-speaking released bonded labourers and has submitted its report and suggestions for improvement to the Union Minister in 1990. In Uttar Pradesh, Bandhua Mukti Morcha and Bandhua Mukti are working in Mirzapur district; in none of the other districts magistrates have submitted positive replies to the state government's request for contacting the voluntary agencies. The state government of Andhra Pradesh has agreed to undertake fresh efforts to associate voluntary agencies in the task of identification of bonded labour, "even though in the past the response was not encouraging". The state government of Maharashtra has been categorical in its view against involvement of voluntary agencies "because they tend to take an exaggerated view of the existence of bonded labour"; the Committee notes that in Maharashtra 1,382 bonded labourers have been identified and 1,300 rehabilitated, while 82 are reported as not requiring rehabilitation assistance. By contrast, the state government of Karnataka has issued guidelines to the deputy commissioners for identification of bonded labourers wherein it is emphasized that the non-governmental organizations and the voluntary agencies should be involved in this task. Although the details of the results achieved in this exercise have not been mentioned, it has been pointed out that they are doing remarkable work. Karnataka happens to be the state where, on 31 March 1993, the greatest number of bonded labourers had been identified and released (62,708 persons) and rehabilitated (54,078 persons).

21. The Committee again expresses the hope that the Government will take action to stimulate the involvement of more voluntary agencies, in particular those which have been concerned with bonded labour for years, such as the Bonded Labour Liberation

Front, AWARE and Vidhayak Samsad, and that it will provide detailed information on the measures taken and the results achieved.

Involvement of trade unions

22. In previous comments, the Committee stressed the importance of the involvement of trade unions in the process of identification and rehabilitation of bonded labourers. In its report received in June 1994, the Government states that trade unions are in the organized sector and their involvement in identification and rehabilitation of bonded labourers, who are mainly found in the unorganized sector, may not be a workable proposition. The Committee takes due note of this. Recalling the indication by the National Commission on Rural Labour that bonded labour elements have been noticed but not adequately covered, inter alia, in non-agricultural occupations such as stone quarries, brick kilns, building and road construction, forestry, bidi workers, carpet weavers, potters, weavers, the Committee hopes that measures will be taken, where necessary, for ensuring respect for the right of workers in these occupations to organize.

Proposal for the institution of a national authority on bonded labour

23. The committee previously noted that during the discussion in the United Nations Working Group on Contemporary Forms of Slavery during its 15th Session, July 1990, Anti-Slavery International stated that the continued gravity and magnitude of the bonded labour system was partly the result of a central weakness in the design and functioning of the machinery for the implementation of the Bonded Labour System (Abolition) Act, 1976, and called for the establishment of a national commission on bonded labour. The Committee further noted that in its report published in 1991 the National Commission on Rural Labour recommended that the implementation of the Bonded Labour System (Abolition) Act, 1976, should be improved by the creation of a network of agencies at the national and state levels as nodal agencies to supervise and coordinate the identification, release and rehabilitation of bonded labourers, and to make administration more responsive and vigilance committees accountable. A national authority or national commission on bonded labour should be constituted on the lines of the National Commission on Scheduled Castes and Scheduled Tribes, and at state levels there should be commissioners for bonded labour.

24. In reply, the Government indicated to the Conference Committee in 1992 that the question of setting up a national commission on bonded labour was examined in detail by the Ministry of Labour in the light of the recommendations of the National Commission on Rural Labour, and that it was decided that the setting up of such a commission was not necessary at this stage. What was required was better implementation of the provisions of the Act by the state governments which should be closely monitored each month.

25. In 1993, the Committee noted that a Bill to establish a commission on human rights was being submitted to Parliament, and considered that this commission might be entrusted with questions concerning bonded labour. Following the setting up of a National Human Rights Commission in October 1993 under the Protection of the Human Rights Act, 1993, the Committee in 1994 requested the Government to provide information on any measures envisaged to extend the competences of the Commission accordingly or to establish a national commission on bonded labour.

26. The Committee notes the Government's indication in its report received in February 1995 that the National Human Rights Commission is expected to perform a wide array of functions and its scope of activity is not limited to violations committed

by agents of the State alone. The Government is still of the opinion that better implementation of the Bonded Labour System (Abolition) Act, 1976, by the state governments will eradicate the evil practice. However, various interest groups have pleaded for the setting up of a national commission on bonded labour. Accordingly, a committee of labour ministers, chaired by the Labour Minister, government of Maharashtra, was constituted to examine this issue. There has been a delay in the submission of the report of this committee on account of frequent changes in the incumbency of the Labour Minister of Maharashtra. The Maharashtra state government has been requested to expedite the committee's report.

27. The Committee takes due note of these indications. It observes that four years have elapsed since the National Commission on Rural Labour published its report. Since then, the recommendation for the setting up of a network of agencies to supervise and coordinate the abolition of bonded labour at the national and state levels has not been implemented, and with a few exceptions, mainly due to the initiative of voluntary agencies, the identification of bonded labourers appears to have come to a halt. At the same time, the Committee notes that there is no longer a regular presentation of a general overview of the state of the problem as had been given up to 1989, to a certain extent, in the reports of the Commissioner on Scheduled Castes and Scheduled Tribes (29th report, 1987-89) and lastly in the report of the National Commission on Rural Labour, published in 1991. The Committee observes that if a high level of awareness already exists about the problem of bonded labour, it is not apparent that every possible effort is being made to maintain this awareness, let alone to solve the problem. The Committee looks forward to learning of action taken on the proposal made by the National Commission on Rural labour in 1991 for the institution of a national authority on bonded labour to supervise and coordinate at the national and state levels the identification, release and rehabilitation of bonded labourers and to make administration more responsive and vigilance committees accountable.

Rehabilitation

28. *Time-lag between liberation and rehabilitation*. The Committee previously noted that the National Commission on Rural Labour pointed to the considerable time-lag between liberation and rehabilitation and poor follow-up on rehabilitation, leading to misery and relapse into bondage. Referring to the statistics provided by the Government concerning the numbers of bonded labourers identified and those rehabilitated and the targets for 1993-94, the Committee noted that in certain states large numbers of identified bonded labourers still are to be rehabilitated. Thus, on 31 March 1993, in the state of Andhra Pradesh, out of 35,934 bonded labourers identified, 25,753 had been rehabilitated and 10,181 still remained to be rehabilitated but regrettably the tentative target for rehabilitation during 1993-94 was only 1,000.

29. The Committee notes with interest from the Government's latest report that the rehabilitation of bonded labour which was tending to lag behind in Andhra Pradesh has been speeded up as a result of concerted efforts by the Ministry of Labour and the state government and problems being encountered at the field level have been sorted out. The flow of financial assistance from the Government of India to the state government of Andhra Pradesh for rehabilitation of bonded labour has increased from nil rupees in 1991-92 to 2.7 million rupees in 1992-93 and further to 10.1 million rupees in 1993-94. The annual target of rehabilitating 1,000 bonded labourers in Andhra Pradesh in 1993-94 was practically achieved. As compared to the previous year, the target for 1994-95 for rehabilitation of bonded labour in Andhra Pradesh has been enhanced by 100 per cent. The Committee welcomes this progress but notes that even at the rate of 2,000

rehabilitated persons per year, the last bonded labourers available for rehabilitation as on 31 March 1993 would be rehabilitated only in 1999. The Committee looks forward to learning of further measures taken to accelerate the process of rehabilitation of the identified bonded labourers, in Andhra Pradesh and Karnataka as well as in other states, where bonded labourers are newly identified.

30. Noting that, for certain states, considerable numbers of bonded labourers have been designated in the Government's report as "not available for rehabilitation", the Committee would appreciate it if the Government would supply an explanation by reference to the Bonded Labour System (Abolition) Act, 1976.

31. *Adaptation of the centrally sponsored scheme.* The Committee previously noted that under the centrally sponsored scheme for rehabilitation of bonded labour a sum of 6,250 rupees is to be spent for the rehabilitation of each bonded labourer. Out of this sum 500 rupees are meant to be given in cash to the bonded labourer soon after his release to enable him to tide over the period till his rehabilitation. The Committee asked whether such a sum had proved sufficient to avoid the newly freed bonded labourer falling back into bondage on account of the lack of means of subsistence, given in particular the fact that a long period of time elapses between his release and rehabilitation.

32. The Committee notes from the Government's report received in June 1994 that state governments have taken diverging views: Haryana considered that since no bonded labour had been identified to be released, no occasion had arisen for making the payment of 500 rupees. Maharashtra and Tamil Nadu stated that there had been no complaints about inadequacy of funds or relapse into bondage; by contrast Gujarat, Uttar Pradesh, Karnataka and Bihar considered the subsistence allowance of 500 rupees not to be adequate; for Gujarat and Uttar Pradesh it should now be enhanced to 1,000 rupees, and in Bihar, the Government has suggested that it should be 1,500 rupees, paid at the rate of 250 rupees per month for six months, the duration that the rehabilitation process commonly takes. According to the government of Uttar Pradesh, the overall amount of 6,250 rupees should be enhanced to 15,000 rupees. The government of Karnataka added that rehabilitation of bonded labourers is undertaken by promoting their self-employment. During 1992-93 the government of Karnataka started providing agricultural land for rehabilitating bonded labourers in groups. The minimum size of agricultural estates is 50 acres for 12 rehabilitated bonded labourers. This exercise has been initiated in six districts; it permits to provide common facilities, to have convergence of government programmes within the cluster and to properly monitor the work done.

33. The Committee hopes that the Government will be in a position to increase the funds payable under the centrally sponsored scheme and that it will supply further information on the action taken in this regard.

34. *Integration of the centrally sponsored rehabilitation scheme with other anti-poverty programmes.* The Committee has noted with interest the details supplied by the Government on the measures taken in nine states for the integration of the centrally sponsored scheme with other programmes, such as Integrated Rural Development Programme, Jawahar Rozgar Vojana, Employment Assurance Scheme, Training of Rural Youth for Self-Employment, Special Component Plan/Sub-Plan for Scheduled Castes and Scheduled Tribes. It hopes that the Government will be in a position to report on further action in this field.

35. *Follow-up of other recommendations.* The Committee previously noted that in its statement to the Conference in 1993 the government representative referred to land based, non land based and skill craft based rehabilitation grants. It also noted that the National Commission on Rural Labour pointed to shortcomings, such as poor quality of

land in the land based scheme, and stressed the need to attempt rehabilitation for migrant bonded labourers either in the state in which they work or in their state of origin. The National Commission proposed that the scheme of rehabilitation be chosen in consultation with the beneficiary and be well planned; lands be of reasonably good quality in the case of land based schemes; the jurisdiction banks be directed to provide consumption loans, since the predominant cause for lapsing into bondage is indebtedness largely for consumption needs. The Committee again expresses the hope that the Government will provide information on measures taken or envisaged following the proposals by the National Commission on Rural Labour.

36. Noting with interest the information supplied by the Government on the "Alternate Scheme of Self-Development of the Released Bonded Labourers" submitted by the Mukti Niketan in the Supreme Court of India on being invited to do so in public interest litigation (Writ Petition No. 483 of 1987), the Committee hopes that a copy of the judgement will soon be forwarded. It also looks forward to learning of the outcome of Supreme Court Writ Petition No. 121215 of 1984.

Penal sanctions and enforcement

37. The Committee noted in its previous comments from the report of the National Commission on Rural Labour that there had been very few prosecutions against persons keeping labour in bondage. The National Commission stressed that the process of identification and release and bringing of criminal proceedings should, as far as possible, be simultaneous activities, and made a certain number of proposals to improve the situation. The Committee noted the Government's statement to the Conference Committee in 1993 that criminal prosecution had to be based on due process of law and could not be done within artificial time-limits. The Committee asked how much time was required by due process of law under national conditions in order to file a criminal prosecution. Noting that the Act abolishing the bonded labour system was adopted in 1976 and referring to the National Commission on Rural Labour's assessment, the Committee asked for detailed information on the measures taken to ensure due process of law. Noting also that the penal sanctions provided by the Act of 1976 include, besides prison of up to three years, a rather meaningless fine up to 2,000 rupees, the Committee asked for information on measures taken to ensure the effective punishment of offenders indicating, in particular, the number of proceedings and of convictions as well as penalties imposed since the Act of 1976 was brought into force.

38. *Adequacy of penalties.* The Committee notes that no information has been supplied by the Government on the penalties imposed under the Act of 1976. Recalling that under Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and the Government must ensure that penalties imposed are really adequate and strictly enforced, the Committee again expresses the hope that the necessary action will be taken to ensure that the penalties imposed by law are really adequate, and that the Government will provide information on any corresponding amendment of the 1976 Act. Pending such action, the Committee hopes that full details will be supplied in the number of cases in which mere fines, actual prison sentences or suspended ones were imposed on those convicted.

39. *Enforcement statistics.* The Committee notes the statistics supplied by the Government on the number of prosecutions launched in 12 states under the Bonded Labour System (Abolition) Act, 1976, up to March 1993, with an indication of the number of offenders prosecuted (in three states) and convicted (in Uttar Pradesh). The Committee notes that in Uttar Pradesh alone, with 27,489 bonded labourers identified as on 31 March 1993, 2,305 prosecutions were launched, resulting in 1,031 acquittals,

84 cases pending and 1,190 convictions; by contrast, for 11 other states, with over 220,000 bonded labourers identified, the Government's statement shows a total of only 2,354 prosecutions launched, with 987 persons actually prosecuted (in three states).

40. *Enforcement: expediency and efficiency.* On the issue of simultaneous identification, rehabilitation and initiation of legal proceedings against those engaging bonded labour, the Government indicates in its latest report that some of the state governments are apprehensive that the fear of punitive action may be counter-productive as it may deter the offenders from voluntarily cooperating in the identification process. The Committee observes that the identification process appears to have come to a halt while awaiting the voluntary cooperation of the offenders. The Committee notes the Government's further indication that filing of a criminal prosecution against an offender does not take any time, but, given the independent functioning of the judiciary, it is not possible for the administrative authorities to prescribe any time-limit for the conclusion of legal proceedings. In this connection, the Committee however also notes the Government's statement in its report received in June 1994 that section 21 of the Bonded Labour System (Abolition) Act, 1976, makes provision for the summary trial of offences under the Act. The Committee again expresses the hope that the Government will soon take the necessary action to ensure, in conformity with its obligation under Article 25 of the Convention, that adequate penal sanctions for the exaction of forced labour are imposed on the offenders and are strictly enforced. It hopes that the Government will supply information on the measures taken, as well as updated statistics on the numbers of proceedings brought and of convictions made, with an indication of the type of penalty imposed, as requested.

41. *Legal aid.* Further to a proposal made by the National Commission on Rural Labour, the Committee notes with interest the Government's indication in its report received in June 1994 that there are already in different states arrangements for providing legal aid to the poor and that further instructions will be given in this regard. It hopes that the Government will supply information on the action taken and its implications for the application of the Bonded Labour System (Abolition) Act, 1976. In this connection, recalling the proposal by the National Commission on Rural Labour that legal provisions be made for the enforcement of wage claims of discharged bonded labourers and the restoration of lands belonging to bonded labourers but usurped by moneylenders and bigger landowners on account of loans given at exorbitant rates of interest, the Committee notes the Government's indication in its report that the provisions of the Minimum Wages Act apply to wage claims by discharged bonded labourers and there already is a provision in the Bonded Labour System (Abolition) Act, 1976, for restoration of the property of the bonded labourer after his release, free of encumbrances. The Committee hopes that the Government will supply details on practical measures taken, through legal aid schemes and otherwise, for the application in practice of the said legal provisions.

Children in bondage

42. In its previous comments the Committee referred to allegations brought before the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities that children were in bondage in agriculture, brick kilns, stone quarries, carpet weaving, handlooms, matches and fireworks, glass bangles, diamond cutting and polishing; that child bondage and forced labour were connected with trafficking, kidnapping, repression, absence of freedom of movement, beating, sexual abuse, starvation, abnormal working hours and hazardous working conditions. The Committee noted the Government's indication that for the purpose of identification and rehabilitation

by the machinery set up for this purpose no distinction is made between bonded child labour and bonded adult labour. Given however the particular vulnerability of children and their specific needs, the Committee asked for information on any specific measures taken for their identification, release and rehabilitation.

The Committee also asked for a comprehensive report on the situation of children in bondage.

43. *Minimum wage*. The Committee notes the Government's indication in its latest report that it is firmly committed to progressively eliminating the scourge of child labour. As part of the legislative action plan, the Government has decided to introduce a Bill in Parliament with a view to amending the Child Labour (Prohibition and Regulation) Act, 1986. The proposal is to do away with any scope for minimum wage fixation which may tend to encourage child labour practice. The text of the Bill is being finalized in consultation with the competent ministry. The Committee looks forward to learning of the adoption of the Bill.

44. *Law enforcement statistics*. Although specific data on cases of forced labour of children are not collected and compiled, the Government points to an appreciable increase during the last two years in the number of inspections, prosecutions and convictions under the Child Labour (Prohibition and Regulation) Act, 1986, and the Factories Act, 1948. The Committee however notes from the detailed data supplied by the Government in June 1994 for the year 1993 and covering 15 states that prosecutions under the Child Labour Act were brought only in Uttar Pradesh (4,770), Tamil Nadu (16) and Maharashtra (37), with convictions reported only in Uttar Pradesh (567) and Tamil Nadu (2).

According to reports received from the state governments about 1,400 child bonded labourers have been identified. According to the National Sample Survey, 1987, the number of child labour is placed at 17.02 million. Of these, 2 million are estimated to be engaged in hazardous occupations.

The Prime Minister in his Independence Day address to the nation on 15 August 1994, announced a new scheme for rooting out the already illegal child labour practice in hazardous employments. Under this scheme, an estimated 2 million child labourers engaged in hazardous employments in India are sought to be taken out of the world of work by the year 2000.

45. *Government action*. On 1 October 1994 the National Authority for the Elimination of Child Labour (NAECL) was set up under the chairmanship of the Ministry of Labour. At its third meeting held on 16 January 1995, the NAECL adopted a blue-print for action to tackle the child labour problem titled "Identification, release and rehabilitation of child labour". A circular has been forwarded to the states/UTs for adoption.

The circular covers the range of actions required to tackle the child labour problem especially in hazardous occupations. It calls for the convergence of services and schemes of the central and state governments at the implementation level — the district level — to effectively coordinate the child labour elimination projects. Broadly, the effort aims at:

(a) better enforcement of laws intended for the protection of children;

(b) withdrawal of children from work and diverting them to special schools where they will be given primary level education, pre-vocational training, additional nutrition and stipends;

(c) covering parents of child labour through poverty alleviation and income-generation schemes to reduce the need to send their children to work;

(d) prevent fresh entry of children into the world of work by intensifying activities to provide pre-school education, health and nutrition to children in the 0-6 age group through schemes like Integrated Child Development Services (ICDS), community nutrition programmes, etc.

The Government is actively pursuing the objective of complete elimination of child labour in the slate industry at Mandsaur (Madhya Pradesh) and the tile industry at Jaggampet (Andhra Pradesh). These two national child labour projects have been identified by the National Child Labour Advisory Committee.

46. The Committee looks forward to learning of the results of these schemes and action plans, as well as on the follow-up of the report of the subcommittee on elimination of child labour in the match and fireworks industry in Tamil Nadu, a copy of which was supplied by the Government in February 1995.

47. *Protection against sexual exploitation.* In its report received in June 1994, the Government indicated that all the state governments and union territory administrations had been advised to form advisory committees at the state level to take measures for the eradication of child prostitution and to devise and implement social welfare programmes for their care, protection, treatment, development and rehabilitation.

48. The Committee notes the Government's indication in its latest report that the state government of Uttar Pradesh is seized of the problem of alleged child prostitution and will conduct a survey in the affected areas. Some police stations with all-women staff have been set up, "rescue officers" have been posted in certain sensitive divisions to organize raids with police assistance for rescuing the victims and following up court cases. "Police gender sensitization" in training of police officers, shifting the burden of proof from the victim to the accused, involvement of NGOs in the rehabilitation of child prostitution victims are some of the points being considered to tackle the problem. On the specific allegation regarding auction and sexual exploitation of children, the district magistrates, Agra, Saharanpur and Varanasi have reported that no such case has come to light. In these three districts, during the last three years 57 raids were conducted, 465 suppression of immoral traffic cases were registered in courts and 131 cases ended up in conviction.

The Committee hopes that the Government will supply a copy of the survey to be made and information on further action taken in Uttar Pradesh as well as in other states and union territories.

Liberia (ratification: 1931)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

> 1. *Penal sanctions for illegal exaction of forced labour.* Referring to its previous comments the Committee recalls that under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence with penalties which should be really adequate and strictly enforced. The Committee trusts that the necessary legislation will be enacted.
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> 2. *Local public works.* In previous observations, the Committee noted that, notwithstanding the repeal in 1962 of provisions for the exaction of forced labour for public works contained in the Revised Laws and Administrative Regulations for Governing the Hinterland, 1949, continued use had been made of such powers for carrying out local development works through self-help projects. The Committee noted that according to the annual report of the Ministry of Local Government, Rural Development and Urban Reconstruction for 1981, 75 per cent of rural development projects visited during a

nationwide inspection tour were funded through self-help and it requested the Government to provide a copy of the report on the inspection tour and any similar report.

The Committee hopes that the legislative provisions to be adopted with a view to giving effect to the requirements of Article 25 of the Convention will ensure that any exaction of labour in connection with local development works can be the subject of effective penalties.

3. *Enforcement of the prohibition of forced or compulsory labour.* In previous observations, the Committee pointed out that, under *Articles 24 and 25 of the Convention*, the Government was under an obligation to ensure the strict observance of the prohibition of forced or compulsory labour. It stressed the importance, in this connection, of measures to ensure adequate labour inspection, particularly in non-concessionary agricultural undertakings and in relation to Chiefs. The Committee hopes the next report will contain further information in this respect.

The Committee hopes that the Government will make every effort to take the necessary measure in the very near future.

Madagascar (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee noted the statement by the Government representative to the Conference Committee in June 1992 to the effect that the Government took its obligations in respect of ratified Conventions seriously, and particularly with regard to Convention No. 29, on which a detailed report was to be sent in the very near future. The Government representative also stated that the compulsory nature of national service had been abolished. The Committee notes, however, with regret, that since 1990, no report has been received from the Government. It is, therefore, obliged to repeat its previous observation, which read as follows:

1. *Article 2, paragraph 2(c), of the Convention.* In its previous comments, the Committee referred to the provisions of Decree No. 59-121 of 27 October 1959 (amended by a Decree of 6 March 1963) to establish the general organization of the prison services, under which prison labour may be hired to private undertakings and prison work may be imposed on persons detained pending trial. The Committee noted the Government's statements that the hiring of prison labour to private individuals has been abolished by repeated circulars and that persons awaiting trial are no longer forced to perform prison work, following comments by the Committee of Experts. It also noted that the revision of Decree No. 59-121 was under study.

The Committee noted the indications communicated by the Government in its report for the period ending 30 June 1989, to the effect that Decree No. 59-121 had not yet been amended. It expresses again the hope that it will be amended in the near future in order to bring the law into conformity with the Convention on this essential point.

2. In earlier comments, the Committee referred to Act No. 68-018 of 6 December 1968 and to Ordinance No. 78-002 of 16 February 1978 respecting the general principles of national service, which define national service as the compulsory participation of all Malagasies in national defence and in the economic and social development of the country. It also noted the provisions of section 8 of Ordinance No. 78-003 of 6 March 1978 establishing the conditions of service of staff liable to national service obligations on the active and reserve lists, under which members of the armed forces performing their service outside the armed forces are referred to by their functions (teachers, doctors, telegraphists, etc.) followed by the term "national service". Lastly, it noted the various texts that either referred to the powers of the military committee for development with regard to work in support of the local communities, or laid down the procedure for the incorporation in national

service of young school-leavers and recruits of a particular age group, or changed the name of the units responsible for development (development forces).

The Committee recalled that under the provisions of Act No. 68-018 and Ordinance No. 78-002, national service is defined as the *compulsory* participation, imposed for a period of up to two years, of part of the population, namely young Malagasies from 18 to 35 years old, *under the threat of various penalties and sanctions*, in the activities of national defence and the economic and social development of the country. The Committee referred to *Article 2, paragraph 2(a), of the Convention* under which compulsory military service, if it is confined to *work of a purely military character*, does not come within the scope of the Convention. It pointed out that work imposed on recruits under national service, and in particular work relating to the economic and social development of the country, is not of a purely military character.

The Committee noted the Government's statement that national service was established with a view to fostering economic and social development and had helped to reduce illiteracy in certain regions, and that secondary school-leavers joined up voluntarily.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

Myanmar (ratification: 1955)

1. *Compulsory porterage*. In comments made for a considerable number of years, the Committee has noted that section 8(1)(g), (n) and (o), read together with sections 11(d) and 12 of the Village Act (1908) and section 7(1), (m), read together with sections 9(b) and 9A of the Towns Act (1907), provide for the exaction of labour and services, in particular porterage service, under the menace of a penalty from residents who have not offered themselves voluntarily. In 1991, the Committee noted observations submitted by the International Confederation of Free Trade Unions (ICFTU) alleging that the practice of compulsory portering was widespread in the country. In 1993, the ICFTU made a representation under article 24 of the ILO Constitution alleging non-observance of the Convention, and the Committee suspended consideration of this matter, pending the examination of the representation by the Governing Body. The Committee has now taken note of the conclusions and recommendations made by the Committee set up by the Governing Body to examine this representation, which were adopted by the Governing Body at its 261st Session (November 1994). The Committee set up by the Governing Body observed that the exaction of labour and services, in particular porterage service, under the Village Act and the Towns Act is contrary to the Convention, ratified by Myanmar in 1955, and the Governing Body urged the Government to take the necessary steps:

(i) to ensure that the relevant legislative texts, in particular the Village Act and the Towns Act, are brought into line with the Convention; and

(ii) to ensure that the formal repeal of the powers to impose compulsory labour be followed up in practice and that those resorting to coercion in the recruitment of labour be punished.

The Committee notes the Government's statement at the 261st Session of the Governing Body, indicating that Myanmar was undergoing a major transformation in changing from one political and economic system to another and that a basic step in this process was the amendment of laws which no longer pertain to current circumstances and situations. Recalling that in its reports on the application of the Convention, the Government has indicated ever since 1967 that the authorities no longer exercised the powers vested in them under the provisions in question of the Village Act and Towns Act, which were established under colonial rule, did not meet the standard and the needs of the country's new social order and were obsolete and soon to be repealed, the Committee hopes that this will now be done and that the Government will supply full details on the steps taken both as regards the formal repeal of the powers to impose compulsory labour and the necessary follow-up action, with strict punishment of those resorting to coercion in the recruitment of labour. As pointed out by the Governing Body Committee, this follow-up appears all the more important since the blurring of the distinction between compulsory and voluntary labour, recurrent through the Government's statements to the Committee, is all the more likely to occur also in actual recruitment by local or military officials.

2. *Imposition of labour for public works.* In its previous observation, the Committee noted the report by a Special Rapporteur on the situation of human rights in Myanmar submitted to the United Nations Commission on Human Rights at its 49th Session, February-March 1993 (document E/CN.4/1993/37 of 17 February 1993). In his report, the Special Rapporteur refers, inter alia, to the testimony of persons taken to provide labour in the construction of railroads (Aungban-Loikaw railroad) and of roads or the clearing of jungle areas for the military, that hundreds of persons were killed by the military when, as with porters, they were unable to carry loads and to continue the hard labour. The labour projects reportedly included two major railway projects, other border development projects of the Government, particularly along the Thai-Myanmar border and labour for the military, particularly in the areas of conflict in the Karen, Karenni, Shan and Mon areas.

It was reported that the labourers died frequently as a result of constant beatings, unsanitary conditions, lack of food and lack of medical treatment once they became sick or wounded and unable to continue work. Witnesses also provided information that some friends or relatives who returned from the work in the border development projects died afterwards as a result of the wounds and diseases contracted during their labour.

The Committee requested the Government to comment on the detailed testimony reported by the UN Special Rapporteur.

The Committee notes that no report has been sent by the Government under article 22 of the Constitution on the application of the Convention; the Government has, however, addressed these matters in its written statement and additional detailed statement presented in May and October 1993 to the Governing Body Committee to consider matters relating to the observance of Convention No. 29.

In its written statement presented in May 1993 the Government indicates that allegations that the Myanmar authorities are using forced labour for the construction of railways, roads and bridges are false and based on fabrications by people who wish to denigrate the image of the Myanmar authorities and do not understand the tradition and culture of the Myanmar people. In Myanmar, voluntary contribution of labour to build shrines and religious temples, roads, bridges and clearing of obstruction on pathways is a tradition which goes back thousands of years. It is a common belief that the contribution of labour is a noble deed and that the merit attained from it contributes to a better personal well-being and spiritual strength. In the villages and in the border areas, Tatmadaw men (the Myanmar armed forces) and the local people in the region have been contributing voluntary labour towards building roads and bridges for the past four years or so. There is no coercion involved. In Myanmar history, there has never been "slave labour". Since the times of the Myanmar kings, many dams, irrigation works, lakes, etc., were built with labour contributed by all the people from the area.

Accordingly those who accuse the Myanmar authorities of using forced labour patently reveal their ignorance of the Myanmar tradition and culture.

In its additional detailed statement, the Government specifies that allegations made on the use of forced labour for the railway projects in southern Shan State relate to the construction of two sections, from Aungban to Pinlaung and from Pinlaung to Loikaw. The purpose of this project is to promote and develop smooth and speedy transportation in the region for economic and social development. Labour contributed to this project was purely voluntary. The armed forces personnel (Tatmadaw) numbering 18,637 from military units stationed in the area and 799,447 working people from 33 wards and villages of Aungban township and 46 wards and villages of Pinlaung township contributed voluntary labour. Fifteen heavy machines belonging to the Public Works and Irrigation Department and Myanmar Timber Enterprises were utilized. In addition, technicians and labourers from the Myanmar Railways (state organization) also contributed their labour. For the purely voluntary labour contributed by the people of the region, the Government disbursed a lump sum of 10 million kyats (US$1.6 million) for the Aungban-Pinlaung sector and another 10 million kyats for the Pinlaung-Loikaw sector.

The Government adds that the entirely voluntary labour which contributed towards the construction of this railroad was witnessed by the members of the diplomatic corps in Yangon, who visited the construction site in January and May 1993. The members of the diplomatic corps met the people who contributed this labour and there were no instances where complaints were made to them.

The Government further considers that, under Article 2, paragraph 2(e), of the Convention, the building of the railroad can be regarded as a communal service performed by the members of the community for the members of the community in direct interest of the community. Prior to the construction of the project, consultation in a free and spontaneous manner was made with the people of the community and the project was carried out with spontaneous enthusiasm on their part to contribute their labour.

The Committee takes due note of these indications. As regards Article 2, paragraph 2(e), of the Convention, which exempts from the provisions of the Convention minor communal services, the Committee refers to paragraph 37 of its General Survey of 1979 on the Abolition of Forced Labour, where it recalled the criteria which determine the limits of this exception: the services must be *minor* services, i.e. relate primarily to maintenance work; and the services must be *communal* services, performed in the direct interest of the community and not relate to the execution of works intended to benefit a wider group. The construction of a railroad would not appear to meet either of these criteria, even where the third condition is met, namely that the members of the community or their direct representatives, must have the right to be consulted in regard to the need for such services.

The Committee further notes that the provisions of the Village Act and the Towns Act mentioned in point 1 above confer sweeping powers on every headman to requisition residents to assist him in the execution of his public duties. Where such powers exist, it is difficult to establish that residents performing work at the request of the authorities are doing so voluntarily.

The Committee accordingly hopes, with regard to public works projects as well as regarding porterage services, that the powers vested in the authorities under the Village Act and the Towns Act will now be repealed, and that the Government will supply full information on the measures taken to this effect as well as on the follow-up action mentioned in point 1 above.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

Panama (ratification: 1966)

The Committee notes that the draft Bill, to which the Government has been referring for over ten years, to repeal and amend the provisions of the Administrative Code (sections 873, 878, 882, 884 and 887) and Act No. 112 of 1974, under which police chiefs are empowered as administrative authorities to impose sentences, including labour on public works and detention, has not yet been adopted.

In accordance with Article 2, paragraph 2(c), of the Convention, work can only be exacted as a consequence of a conviction in a court of law; the imposition of compulsory labour by administrative authorities is not therefore compatible with the Convention.

The Committee hopes that the Government will take the necessary measures without delay to ensure that the provisions of the Convention on this point are respected.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Paraguay (ratification: 1967)

Article 2, paragraph 2(c), of the Convention. The Committee has been referring for 20 years to section 39 of Act No. 210 of 1970 respecting the prison system, which is contrary to this provision of the Convention since it states that "work shall be compulsory for detainees", although the same Act (section 10) defines as detainees not only convicted persons but also persons subjected to security measures in a prison establishment.

Since 1977 the Government has been referring to a bill to amend section 39 of Act No. 210.

In its previous observation the Committee expressed the hope that the necessary measures would be taken without delay to ensure observance of the Convention on this point on which it has been commenting for so many years, and asked the Government to provide a detailed report on the matter.

In its report the Government states that "there have been no changes in the situation".

The Committee hopes that the Government will not further postpone taking the necessary measures to ensure observance of the Convention.

Spain (ratification: 1932)

In previous comments the Committee has referred to observations from the Trade Union Confederation of Workers' Committees on the application of the Convention, alleging that prisoners are not guaranteed the conditions of employment set out in agreements as regards working hours, remuneration and benefits, and that the conditions to which prisoners are subject as regards social security are not the same as those for other workers. The Committee also observed that the Prison Regulations (Royal Decree No. 1202/81) do not establish clearly that the free consent of convicts is required for them to work in private enterprises.

(a) With regard to the prisoner's free consent, the Committee notes the Government's indication that inmates wishing to do so apply of their own accord to work under the independent body "Trabajos penitenciarios" and a selection is then made among the applicants. The Government adds that this system is based on *section 183(3)* of the Prison Regulations.

The Committee observes in this connection that section 183(3) refers to persons detained pending trial who, by virtue of the Convention, may not be compelled to work but may work if they wish, on a purely voluntary basis. With regard to convicts, the Committee once again asks the Government to take the necessary steps to establish the voluntary nature of the work done by prisoners for private enterprises.

(b) The Committee asked the Government to provide information on the standards set by the independent body "Trabajos penitenciarios" for fixing the inter-sectoral minimum wage and copies of contracts between private enterprises and prisoners.

As regards the question of wages, the Committee notes the comments made by the Trade Union Confederation of Workers' Committees, sent by the Government with its report, to the effect that the wages of prisoners who work for private enterprises are fixed without the prisoners or their representatives intervening, and are determined in accordance with the rules of the independent body "Trabajos penitenciarios".

According to the Government's statement in its report, prisoners' contracts with private enterprises are subject to the pay conditions prevailing in the sector, depending on the labour market, and in cases where the employer is "Trabajos penitenciarios", the rules governing special labour relationships are applied in accordance with the Regulations.

The Committee asks the Government to provide the rules set by "Trabajos penitenciarios" to determine the inter-sectoral minimum wage, and notes the specimen contract between a prisoner and a private enterprise, sent by the Government, which is a fixed-term contract in which, according to the Government, the above-mentioned independent body does not intervene. The Committee notes that in this case the pay conditions prevailing in the sector have been applied.

Thailand (ratification: 1969)

Further to the discussion that took place in the Conference Committee in 1994, the Committee notes the information provided by the Government in its report.

Previous comments of the Committee have focused on the problems of forced child labour exploitation, labour inspection, enforcement of criminal and labour legislation by the police, and the adequacy of sanctions taken against employers for infringement of child protection legislation.

The Committee noted that many children continue to work under coercion or in conditions of exploitation which have no resemblance to a free employment relationship. The situation is often linked to forced or false recruitment, deception and trafficking. Children are exploited because they are young and helpless, they are deprived of the right to lead a normal childhood, deprived of education, deprived of a future.

The Committee has emphasized that forced labour exploitation of children, be it forced child labour, child prostitution, child pornography, be it in factories, sweatshops, brothels, private houses or elsewhere, is one of the worst forms of forced labour, which must be fought energetically and punished severely.

In its latest comments the Committee took note of the report by a direct contacts mission which, at the request of the Government of Thailand, visited the country in September 1993. The Committee noted that Thailand had witnessed a tremendous national growth rate over recent years, emerging as a newly industrialized country, but that large pockets of poverty and profound disparities remained or had widened between rich and poor. The Committee stressed that while poverty was one of the contributing factors to child labour, it cannot be taken as an excuse for perpetuating child labour, or even less so for forced labour exploitation of children.

The Committee stressed the importance of concrete and effective action to deal with the problem of forced child labour exploitation, according to clearly fomulated goals and well-defined strategies. It pointed to the necessity of adopting means, such as a comprehensive legal framework, of improving law enforcement (requiring essentially the political will to provide the necessary means for effective action), of stimulating community awareness, and of adopting a comprehensive rehabilitation programme. The Committee stressed in particular the necessity to translate into reality the Government's stated policy to extend compulsory education from grade 6 to 9, and in the immediate future to grade 7, which would mean that children would leave the education system at the age of 13, corresponding to the present minimum age for admission to employment.

In its latest report, as well as in its statement to the Conference Committee, the Government has referred in particular to a number of initiatives taken or envisaged in relation to law enforcement, education and awareness-raising. It also stated that the existence of children working under conditions of exploitation in Thailand could not be denied.

Enforcement

(a) Inspection

The Committee has previously noted that although laws exist in Thailand for the protection of children, these laws are of no value unless they are properly enforced through the labour inspectorate and the police. The Committee notes from the report provided by the Government for the period ending 30 June 1994, that labour inspection was carried out in 35,738 establishments with 2,486,929 employees throughout the kingdom. Of the total number of employees, 29,552 were employed children of whom 438 were under 13 years old, 3,406 were children aged 13-15 years and the remaining 25,708 were children aged 15-18 years. It was found that there were 436 establishments violating the labour protection law on working hours and holiday work, with 192 establishments employing children between 13-15 years old and 244 establishments employing children 15-18 years old.

No information is provided as to the kinds of establishments investigated by the labour inspection, whether small enterprises, factories, restaurants, hotels, brothels, etc., and there is no indication of the number and kind of cases handled by the police, particularly the Crime Suppression Division.

The Committee hopes that the Government will provide statistical information not only as to the number of inspections conducted by the labour inspectorate, but also by category of establishment inspected, action taken against offenders, and the role of the local police and the Crime Suppression Division. With over 35,000 establishments inspected and only 438 violations of children under 13 years old working, the question arises whether inspection was carried out where it was most needed.

The Committee has previously suggested that women police officers could be assigned to active duty investigation of cases involving women and children. The Committee hopes that the Government will also communicate its position on this point.

(b) Prosecution

The Committee notes with concern that there is no mention in the Government's report of prosecutions, convictions or sanctions taken in the 438 cases cited of children under 13 working.

The Committee refers to information provided to the 1993 direct contacts mission by the Commander of the Crime Suppression Division that only five cases of forced child labour had been prosecuted and that due to the length of time and expense of litigation, cases were often settled by negotiation.

The Government mentioned in a Note "Solving Thailand's Child Labour Problems" (1993) that 58 employers were prosecuted for unfair practices and exploitation of child labour; two were punished by imprisonment and fines totalling Bahts 134,300.

These very low figures from 1993 confirm the impression of the direct contacts mission that serious problems of coordination exist in the overall labour inspection mechanism, both internally and in liaison with the police authorities.

The Committee hopes that the Government will provide the most recent figures available concerning prosecutions according to category of violation, convictions and sentences.

(c) Penalties imposed

The Committee notes the information in the Government's report concerning the Penal Code Amendment Act (No. 13) B.E. 2537 (1994) enacted 11 June 1994, the draft Labour Protection Act, and the amendments to the Prostitution Suppression Act of 1960.

(i) It is noted that the Penal Code Amendment Act imposes significantly increased penalties for those found guilty of "detaining, confining or depriving of the liberty of children not over 15 years of age, or if such offence results in their bodily or mental harm or death". The Committee notes with concern, however, that this protection is limited to children "not over 15 years old". It hopes that the Government will supply information on action taken or envisaged to ensure adequate punishment for the same offences when committed against persons over 15 years of age.

(ii) The Committee notes from the Government's report that the Prostitute Suppression Act of 1960 is being amended and is now in the stage of Cabinet consideration. The Government indicates that the amended text will increase "the degree of punishment for pimps, owners, caretakers or managers of brothels, controllers of prostitutes in brothels or persons holding back, detaining or committing offences, to prevent another person's physical freedom and force them into prostitution"; and that it will provide for the punishment of customers of child prostitutes. The Committee hopes that the Government will supply a copy of the revised text.

(iii) The Committee has noted the draft amendment to the Labour Protection Act which, the Government indicates, would reduce working hours for children aged 13 to 15 years in industrial work from 48 hours per week, and in commercial work from 54 hours per week, to 36 hours per week or six hours per day.

The Committee notes certain difficulties concerning the enforcement of this legislation in particular the adequacy of penalties for serious offences.

The Committee understands that section 41 of the Labour Protection Act prohibits the employment of children under 13 years of age in any activity and section 46(4) prohibits the employment of children under 18 years of age in brothels. Yet, the penalties for violation of these laws, under sections 133 and 128, paragraph 2, respectively, are limited to a fine and/or a maximum one-year prison sentence for the employer in the most serious cases (physical or psychological harm to or death of the child).

The Committee considers that the choice between a fine and a prison sentence of not more than a year would not appear adequate for the purposes of ensuring observance of Article 25 of the Convention.

The Committee moreover notes that, under section 139 of the Act ("equivalence"), on the decision of high-ranking municipal or provincial officials, cases *sub judice* can be removed from the courts and dealt with summarily through the payment of fines.

This is not compatible with the Government's Article 25 obligations under the Convention which requires the illegal exaction of forced or compulsory labour to be punished as a penal offence with adequate penalties, imposed by law, and strictly enforced.

The Committee hopes that the necessary action will be taken to introduce adequate sanctions for the illegal exaction of forced labour in general, and in particular, sections 41 and 46(4) of the Act, either through the amendment of sections 128 and 133 or otherwise, and to ensure that cases involving forced labour cannot be removed from the courts under section 139 of the Act ("equivalency").

Finally, the Committee notes that according to the Labour Protection Act, section 3(2), the Act would prevail in the case of a conflict of laws. In view of the above-mentioned inadequacies of punishment under the Labour Protection Act, the Committee hopes that the Government will supply information on measures taken or envisaged to ensure that prosecution under the Labour Protection Act will not prevent concurrent punishment of offenders under the Penal Code and the Prostitution Suppression Act.

Community awareness-raising

The Committee notes the information on efforts undertaken, especially in the north-eastern border region, to warn children in particular and the public in general of the dangers of deceptive recruiting practices, including kidnapping, and indicating the appropriate agencies to contact for help. Moreover, it is noted in the Government's report that volunteers from the community élite (teachers, village headmen, priests) cooperate with the Centre for Women and Child Labour Operations to crack down on the exploitation of women and children. The Committee hopes that the Government will continue to provide information in this regard.

Preventive measures: Education

For a number of years the Government has spoken of attacking the problem of child labour in all its forms by increasing compulsory education to grade 9/age 15. Presently, the minimum age for child employment is 13, but compulsory schooling finishes at grade 6 when children are normally age 12. The Committee recalls the statement by the Prime Minister to the Eleventh Asian Regional Conference (November 1991) in which he expressed his firm conviction that the place for a child was in school and not in a factory; that it was not sufficient to wait for economic restructuring to redress the exploitation of child labour, and that he was determined to do away with child labour and safeguard the future of the underprivileged children in the country.

The Committee hopes that the Government will provide details as to the concrete measures taken to implement this policy, which is to be the first step in eradicating the scourge of child labour and other forms of forced labour exploitation of children.

Child sexual exploitation

In its previous comments the Committee referred to certain statistical data concerning the number of children exploited through prostitution (estimates from 86,000 to 800,000). The Committee notes the Government's indication to the Conference Committee that the latest estimates amount to some 20,000 to 30,000 children in prostitution. The Committee recalls that the Ministry of Health, Division of Venereal Diseases Control, reported in 1990 that child prostitutes numbered 86,000 and that data from the Police Department showed that around 160,000 prostitutes would be under 16. Given the number of children trafficked from neighbouring countries, it is unlikely that these figures would have decreased since 1990. The Committee considers that swift and severe action is required to rescue these children trapped in prostitution.

The Committee further notes the discussion in the Conference Committee that Thailand cannot eradicate the problem of child prostitution alone, particularly when there is an international sex tourism industry. An important measure would be to prosecute travel agencies that organize tours to take advantage of child prostitution. Moreover, as noted previously, with the increase of AIDS worldwide, the demand for younger child prostitutes who are less likely to be infected is increasing. The conditions for delivering visas, particularly to groups, must be scrutinized. It was also noted in the discussions that it is the responsibility of the international community to prosecute its citizens, to the fullest extent possible under national legislation, when their acts abroad constitute crimes in their home country.

While noting the measures that have been taken, in particular the creation of a Ministry of Labour and Social Welfare in September 1993, and the desire expressed by the Government during the direct contacts mission in 1993 to solve these serious human problems, the Committee considers that now is the time to take concrete steps toward implementing these declarations, so that children *are* in school and not exploited. The Committee notes with concern the low level of enforcement of existing labour and criminal legislation designed to protect the most vulnerable. The Committee hopes that the Government will review both existing and draft legislation in light of the Convention, with special attention to ensuring, in conformity with Article 25 of the Convention, that the exploitation of forced labour is punished as a penal offence, that the penalties imposed are really adequate and that they are strictly enforced.

The Government is requested to report in detail in 1996 on the points raised in these comments, with particular regard to law enforcement, inspection, prosecution and conviction of offenders, sentencing, the adequacy of penal sanctions, and increasing the age for compulsory education.

Zaire (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following points:

> 1. In comments it has been making for many years, the Committee has referred to the following texts:
>
> - the provisions of Act No. 76-011 of 21 May 1976 concerning national development efforts, which require, under penalty of penal sanctions, every able-bodied adult person who is a national of Zaire and who is not already considered to be making his contribution by reason of his employment (political representatives, wage earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils), to carry out agricultural work and other development work laid down by the Government. It also noted the measures to implement the Act laid down in Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976;
> - sections 18 to 21 of Legislative Ordinance No. 71-087 of 14 September 1971 on minimum personal contributions, which provides for the imprisonment with compulsory labour of tax defaulters by decision of the chief of the local community or the area commissioner, as a means of recovering the minimum personal contribution.
>
> For many years the Government has referred to draft amendments to the provisions in question. The Committee again expresses the hope that the Government will indicate the

measures taken to bring these provisions into conformity with the Convention and that it will provide a copy of the texts adopted for this purpose.

2. The Government also stated its intention of repealing Ordinance No. 15/APAJ of 20 January 1938 respecting the prison system in native districts, which allows work to be exacted from detainees who have not been sentenced. The Government stated that this text had fallen into disuse and was contrary to Ordinance No. 344 of 17 September 1965 governing prison labour. The Committee noted the indications in the Government's report for the period ending 30 June 1992 that, following a critical analysis of the laws and regulations concerning the organization and operation of the judicial system, the Supreme National Conference has decided to reform the penitentiary system and repeal certain provisions of the law to ensure that detainees are integrated into society and contribute to the community. Detainees will maintain all the rights to which free men are entitled except the right to come and go freely.

The Committee again expresses the hope that the provisions to be adopted will be consistent with those of *Article 2, paragraph 2(c), of the Convention* and that the Government will provide information on any developments in this regard.

3. In its previous comments, the Committee stressed the need to include a provision in the national legislation establishing penal sanctions for persons who unlawfully exact forced or compulsory labour, in accordance with *Article 25 of the Convention*. The Committee noted the Government's indication that it was planned to insert such a provision into the draft of the revised Labour Code.

In its report for the period ending June 1992 the Government indicated that, in view of the changes in labour relations and personal freedoms, the draft of the revised Code had to be updated. The Committee trusts again that the final draft will prohibit forced or compulsory labour under penalty of really effective penal sanctions and that the Government will provide a copy of it.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cambodia, Central African Republic, Chile, Colombia, Comoros, Ecuador, France, Guinea-Bissau, India, Japan, Liberia, Libyan Arab Jamahiriya, Panama, Papua New Guinea, Paraguay, Solomon Islands, Switzerland, Uganda, Zaire.*

Information supplied by *Poland* in answer to a direct request has been noted by the Committee.

Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932

Pakistan (ratification: 1947)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matter:

In 1993, the Committee noted the comments made by the Fishing Vessels Employees' Union in its communication of 11 July 1991 on the working conditions of coastal fishermen; in this communication, a copy of which was forwarded to the Government on 20 August 1991, the Fishing Vessels Employees' Union alleges that fishermen employed on seagoing fishing boats, crafts and trawlers have not been provided statutory protection under any enactment, in violation of, inter alia, the Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932. In the absence of a reply by the Government, the Committee hopes that the Government will supply full information on any measures taken to apply the

Convention to the fishing vessels concerned or to except them from the scope of the Convention.

Convention No. 34: Fee-Charging Employment Agencies, 1933

Requests regarding certain points are being addressed directly to the following States: *Bulgaria, Slovakia.*

Convention No. 35: Old-Age Insurance (Industry, etc.). 1933

Chile (ratification: 1935)

1. The Committee notes the information provided by the Government in its report as well as the discussion on the application of the Convention which took place in the Conference Committee in June 1993. On that occasion the Government's representative stated in particular that Convention No. 35 recognizes and regulates a former model of social security. He added that, though Convention No. 35 had not been applied in Chile since 1980, it was the will of the Government to maintain a constructive dialogue, and to supply in its future reports further information which would permit a legal analysis and proper interpretation of the standards in question by the Committee. In this connection and with reference to the comments it has been making for several years, the Committee is bound to observe that, according to the information in the Government's report, since the "new pension system" was introduced in 1980 by Legislative Decree No. 3500, as amended, the following important provisions of the Convention are still not being applied:

Article 9, paragraph 1, of the Convention (employers' contribution to the financial resources of the insurance scheme). According to the Government's explanation in its report, under sections 17, 18 and 21 of Legislative Decree No. 3500 of 1980, each worker constitutes his own pension fund with the compulsory contribution deducted monthly from his wages. As concerns the employers' contributions, on which the employers and workers may agree upon individually or collectively, in the opinion of the Government, they acquire the character of compulsory contributions in terms of contract law. In this respect, the Committee reiterates that, in the new pension scheme, the employers' contribution is no more than a possible supplementary contribution upon which the worker may agree with his employer without there being any legal obligation on the employer to bear the cost. The Committee must therefore once again express the hope that the Government will take the necessary measures to give effect to the recommendations, approved by the Governing Body, of the Committee set up to examine the representation submitted under article 24 of the Constitution of the ILO alleging non-observance by Chile of, inter alia, Convention No. 35 (see document GB.234/23/28, 234th Session, 17-21 November 1986).

Article 9, paragraph 4 (contribution of the public authorities to the financial resources or benefits of the insurance scheme). The report repeats the information provided previously on state guarantees (sections 73 et seq. of Legislative Decree No. 3500) and indicates that in 1994 the State's monthly contribution in respect of such guarantees was approximately 256 million pesos (US$600,000). According to the Government, the State's contribution cannot be regarded as conditional or exceptional; it is real and concrete, and is a specific amount which can be evaluated. The Committee notes this information. It reminds the Government that the above-mentioned Committee of the Governing Body concluded that this participation "does not strictly correspond to the contribution to the financial resources or benefits of insurance schemes" prescribed by the Convention. The Committee therefore cannot but reiterate the hope that the necessary measures will be adopted to ensure that full effect is given to this provision of the Convention.

Article 10, paragraphs 1 and 2 (administration of the insurance scheme). The Committee notes the relevant provisions of Act No. 19069 of 1991, the substance of which is reproduced in section 220 of the Labour Code (in the consolidated version of January 1994), under which the main purposes of trade unions include establishing, assisting in the establishment of, or associating with, institutions involved in the provision of pension or health insurance, whatever their legal status, and participating in them. The Government's report provides information on "Pension Fund Administration (AFP)" whose establishment has involved participation by unions or organizations of workers and associations of employers. The Government reiterates that private administration on a profit basis of the new pension system has encouraged competition between the AFPs and attracted new insured persons by better service, a better return on investment of the fund's resources and lower costs to the insured, reflected in lower commissions. While noting this information, the Committee wishes once again to draw the Government's attention to the above recommendations approved by the Governing Body to the effect that the Government should adopt appropriate measures to amend Legislative Decree No. 3500 so that the pension insurance scheme is administered by non-profit-making institutions.

Article 10, paragraph 4 (participation of insured persons in the administration of insurance institutions). The Government states in its report that Legislative Decree No. 3500 does not establish any compulsory mechanism whereby persons insured by an AFP participate in the administration and direct management of the fund, except in the case of those founded by workers or their associations. However, it does not prohibit such participation. The Committee is bound to reiterate the hope that the Government will give effect to the above-mentioned recommendations approved by the Governing Body and adopt the necessary measures to ensure that the representatives of insured persons participate in the administration of all insurance institutions under conditions to be determined by national laws or regulations, in accordance with the provisions of the Convention.

2. In view of the fact that the Committee has been asking the Government for many years to take the necessary steps to change the pension scheme regulated by Legislative Decree No. 3500 of 1980, the Committee suggests — as did the Conference Committee — that the Government consider the possibility of requesting ILO technical assistance in seeking a means of bringing national legislation and practice into full conformity with the Convention.

[The Committee is asked to report in detail in 1996.]

Convention No. 36: Old-Age Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

[The Government is asked to report in detail in 1996.]

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

Chile (ratification: 1935)

The Committee takes note of the information supplied by the Government in its report.

1. *Article 10, paragraph 1, of the Convention.* See under Convention No. 35, Article 9, paragraph 1.
2. *Article 10, paragraph 4.* See under Convention No. 35, Article 9, paragraph 4.
3. *Article 11, paragraphs 1 and 2.* See under Convention No. 35, Article 10, paragraphs 1 and 2.
4. *Article 11, paragraph 4.* See under Convention No. 35, Article 10, paragraph 4.

[The Government is asked to report in detail in 1996.]

Djibouti (ratification: 1978)

The Committee notes from the Government's report that there have been no changes in the application of the Convention. The Committee recalls that for many years it has been requesting the Government to take steps to amend its legislation so as to provide for invalidity insurance. It again expresses its hope that, with the technical assistance of the International Labour Office, the Government will endeavour to establish an invalidity insurance scheme in accordance with the provisions of the Convention.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

Chile (ratification: 1935)

The Committee takes note of the information supplied by the Government in its report.

1. *Article 10, paragraph 1, of the Convention.* See under Convention No. 35, Article 9, paragraph 1.
2. *Article 10, paragraph 4.* See under Convention No. 35, Article 9, paragraph 4.
3. *Article 11, paragraphs 1 and 2.* See under Convention No. 35, Article 10, paragraphs 1 and 2.
4. *Article 11, paragraph 4.* See under Convention No. 35, Article 10, paragraph 4.

[The Government is asked to report in detail in 1996.]

Djibouti (ratification: 1978)

See under Convention No. 37.

Convention No. 41: Night Work (Women) (Revised), 1934

Central African Republic (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

In its previous comments the Committee noted that section 3 of Order No. 3759 of 25 November 1954 allows exceptions to the prohibition on night work for women in circumstances which are not recognized by the present Convention. The Committee notes from the Government's report that there has as yet been no progress in this area. It again expresses the hope that the Government will take the necessary measures which have long been announced to bring the law into harmony with the Convention.

Venezuela (ratification: 1944)

The Committee notes the information supplied by the Government in its report.

In its previous comments the Committee noted that there was no provision in the Labour Act (*Official Gazette*, 20 December 1990) banning night work for women in industry. Furthermore, under section 379 of the above Act, women workers may not receive differential treatment as regards pay and other working conditions, the only exception being standards specifically drawn up to protect their family life, health, pregnancy and maternity.

The Committee also noted that in its report, the Government referred to section 208 of the Regulations of the 1973 Labour Act, which provides that women, whatever their age, may not be employed at night in any public or private industrial enterprise or in any subsidiary of such enterprises.

The Committee also noted that under section 195 of the 1990 Labour Act, night work is work performed between 7 p.m. and 5 a.m. The Committee recalled that under Article 2, paragraph 1 of the Convention, the term "night" signifies a period of at least 11 consecutive hours, including the interval between 10 o'clock in the evening and 5 o'clock in the morning. In its report the Government referred to section 205 of the Regulations of the 1973 Labour Act, which provides that the "night" period includes the interval between 7 o'clock in the evening and 6 o'clock in the morning.

The Committee hopes that the Government will take the necessary steps to ensure that the national legislation, and particularly the Labour Act of 1990, is brought formally into line with the Convention so as to eliminate any uncertainly as to where the positive law in force stands in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Estonia*.

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

Algeria (ratification: 1962)

Article 2 of the Convention. With reference to its previous comments, the Committee notes the Government's statement to the effect that the text respecting the new schedules of occupational diseases prepared by the inter-ministerial technical committee taking into account the matters raised by the Committee of Experts, is currently undergoing the process of promulgation, and that it will be transmitted to the Office when it has been published. The Committee therefore once again hopes that the implementing texts of Act No. 83-13 of 5 July 1983 will be adopted in the near future and that the new schedule of occupational diseases will take into account the matters raised previously respecting the schedules annexed to the Order of 22 March 1968, as amended, namely:

(a) the list of the various pathological manifestations appearing under each "disease" in the left-handed column of the schedules in the national legislation should be of an *indicative* nature, as is the list of corresponding activities in the right-hand column of these schedules;

(b) the wording of the items concerning poisoning by *arsenic* (schedules Nos. 20 and 21), manifestations due to the *halogen derivatives of hydrocarbons of the aliphatic series* (schedules Nos. 3, 11, 12, 26 and 27), *poisoning by phosphorus* and certain of its compounds (schedules Nos. 5 and 34) should be replaced by wording covering in general terms — like that of the Convention — all manifestations that may be caused by the above substances (wording of this kind would make it possible also to cover diseases that might be caused by the utilization of new products, as the Government pointed out earlier); and

(c) the activities that may cause *anthrax infection* (schedule No. 18) should include the loading and unloading or transport of merchandise *in general*, so as to cover workers (such as dockers) who may unknowingly have transported merchandise contaminated by the anthrax spore.

Argentina (ratification: 1950)

1. In its observation of 1994, the Committee noted a communication from the Congress of Argentinian Workers (CTA) alleging that the system introduced by Act No. 24028 on the compensation of industrial injuries and its implementing Decree No. 1792/92 reduced the level of protection provided for workers too far. The CTA stated in particular that the responsibility of the employer is presumed only in the case of an accident but that there is not legal presumption of the employer's responsibility when an injury results from a disease the origin or aggravation of which is attributed to work.

2. The Committee notes the comments — sent with the Government's report, received in January 1995 — made by the General Confederation of Labour of the Argentine Republic (CGT), referring to certain difficulties with the application of the Convention. According to the CGT, the legislation in force: (a) does not presume the employer's responsibility in the event of occupational diseases, even where they are considered to be strictly work-incurred ("profesionales"), i.e. caused solely by a risk factor present in the place of work; (b) establishes that in assessing incapacity in the case of occupational diseases with more than one cause a "quota" attributable to work will be determined, which is medically impossible; (c) fails to take into account, in establishing time-limits for the certification of the disease, the fact that certain occupational diseases are latent for a long period before taking effect, which means in practice that compensation cannot be claimed. The CGT indicates that the possibility of a radical reform of the legislation is being studied and adds that the Framework Agreement on Employment, Productivity and Social Equity includes an item on the preparation of a bill on protection against occupational risks.

3. The Committee notes the Government's report which contains a memorandum from the National Occupational Safety and Health Department of the Ministry of Labour and Social Security. Concerning the points raised previously by the Committee, it states that Argentine legislation and case-law — which derive from the application of Act No. 9668 of 1915, amended several times — was much broader in concept than the list provided for in the Convention. The Government states that Act No. 24028 of December 1991, which is currently in force, establishes that the employer is not presumed responsible for occupational diseases, and that this is a serious technical and conceptual mistake. It explains that occupational diseases and work-incurred diseases ("profesionales") are not the same thing. Occupational diseases include work-incurred

diseases and other diseases linked to work, but work is not their sole cause. Work-incurred diseases are caused solely by risk factors present at the place of work, and therefore warrant the presumption of the employer's responsibility. The Committee notes that the Government accordingly acknowledges the pertinence of its comments. With regard to the other two points raised by the CGT, the memorandum from the National Occupational Safety and Health Department indicates that the time-limits established in the legislation in force prevent persons suffering from occupational diseases which do not appear until long after their first exposure to the harmful agent from claiming their compensation, and that the provision establishing that a quota attributable to work shall be determined for diseases with more than one cause is scientifically unsound.

4. The Committee reiterates its observation of 1994 to the effect that by ratifving the Convention the Government undertook, in accordance with *Article 2*, to consider as occupational diseases those diseases and poisonings produced by the substances set forth in the Schedule appended to the Convention, when such diseases or such poisonings affect workers engaged in the trades, industries or processes placed opposite in the said Schedule. So that the worker does not have to prove that the cause of his disease was occupational — which in some cases can be particularly difficult — the Convention established the system of a double list setting out the diseases in one column and the activities which may cause them in a column opposite. Since both the Government and the CGT refer to tripartite consultations and a study under way with a view to the adoption of new standards in this area, the Committee is bound to hope that the Government will take the necessary measures to bring national law and practice into harmony with the Convention in the very near future.

The Committee suggests that the Government may wish to seek technical assistance from the Office.

[The Government is asked to report in detail in 1996.]

Bahamas (ratification: 1976)

In reply to the comments that the Committee has been making for many years, the Government indicates that the amendments to the third schedule to the National Insurance (Industrial Benefits) Regulations, 1975, issued under the National Insurance Act — already referred to in its reports received in September 1983 and January 1984 — were still not given any consideration until 1992 when there was a change of government. It adds, however, that these amendments which if implemented would address fully the concerns expressed by the Committee in relation to the Convention and should be reviewed and reappraised in the not too distant future. In this situation, the Committee is bound to urge the Government once again to take the necessary measures to amend the above-mentioned schedule very shortly, in order to give full effect to the Convention on the following points:

Article 2 of the Convention. 1. Item 1(l) and (p), of the third schedule to the 1975 Regulations mentions only some of the *halogen derivatives of hydrocarbons of the aliphatic series* (for example: tetrachlorethane and methyl bromide), whereas the Convention, which is drafted in general terms on this point, covers all the halogen derivatives of these hydrocarbons.

2. Item 2 of the third schedule to the 1975 Regulations, which concerns *anthrax infection*, does not mention among the activities likely to lead to this disease the loading and unloading or transport of merchandise in general, as the Convention does.

3. Item 7 of the third schedule to the Regulations, which relates to *pathological manifestations due to X-rays and radioactive substances*, covers only certain of the

manifestations caused by exposure to X-rays, ionizing particles or other radioactive substances. The Convention, which is drafted in general terms on this point, covers, without enumerating them, all the manifestations that may be caused by such exposure, including those that do not appear in the third schedule of the Regulations (for example: bronchial cancer, cancer of the thyroid; ocular lesions, cataracts, irritations, keratitis; possible lesions of the internal organs and the effects on the development of the embryo).

Guyana (ratification: 1966)

The Committee notes, from the Government's reply to its previous comments, that the list of occupational diseases attached to Regulations No. 34 of 1969 has not yet been amended, but that this question was to be dealt with within the framework of the ILO assistance in legislative reforms in the area of occupational safety and health. The Committee therefore once again hopes that the Government will shortly take all the necessary measures, with the assistance of the ILO, to amend the above-mentioned list, in order to give full effect to the Convention on the following points:

(a) Nos. 1(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms *all halogen derivatives of hydrocarbons of the aliphatic series*;

(b) No. 7, which refers to certain disorders due to radiation should include *all pathological manifestations due to radium and other radioactive substances or X-rays* and the list of processes likely to cause these should be completed;

(c) Nos. 1(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include *lead alloys and mercury amalgams* respectively;

(d) No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include *the inorganic compounds of phosphorus*;

(e) to No. 2 should be added among the processes likely to cause anthrax infection, *all loading and unloading or transport of merchandise* of any kind;

(f) *silicosis with or without pulmonary tuberculosis and the industries or processes involving the risk of this infection* should also be added to the list.

The Committee also hopes that an explicit reference to the direct consequences of poisoning caused by *arsenic* and *benzine* (Nos. (iv), (vii) and (viii) of No. 1 of the list attached to Regulation No. 34 of 1969) will be included in the list of occupational diseases.

Haiti (ratification: 1955)

With reference to its previous comments, the Committee notes that the Government's report has not been received for the second year in succession.

It therefore hopes that a report will be supplied for examination at its next session and that it will contain information on the measures taken or contemplated, with technical assistance from the ILO if necessary, to establish in due course an infrastructure which, inter alia, will gather information, including statistics, on the practical application of the Convention, in accordance with *point V of the report form* adopted by the Governing Body.

New Zealand (ratification: 1938)

For a number of years the Committee has been drawing the Government's attention to the fact that the system of "full coverage" provided by the New Zealand legislation (currently the Accident Rehabilitation and Compensation Insurance (ARCI) Act of 1992), while it may cover a greater number of occupational diseases, is not in accordance with the Convention since, under this system, the diseases listed in the schedule to the Convention are not presumed to be occupational when they are contracted by workers engaged in the trades or industries listed in this schedule.

In its last report received on 15 November 1994, the Government indicates that under the ARCI Act workers who suffer from occupational diseases continue to be compensated on the same terms as workers who suffer any other type of industrial injury. It adds that there is not a strict "burden of proof" on claimants to prove the occupational origin of diseases, as the Accident Rehabilitation and Compensation Insurance Corporation (ACC), which administers the ARCI Act, takes an investigative approach to being persuaded on the balance of probabilities, which is not analogous to the burden of proof in adversarial proceedings. As to the adoption of a schedule of diseases and corresponding trades, in accordance with the Convention, the ARCI Act has not yet been amended, but the Government has initiated a complete review of the Accident Rehabilitation and Compensation Insurance Scheme, including a review of compliance with ILO Conventions. In the framework of this review, the Minister for Accident Rehabilitation and Compensation Insurance has established a Review Panel to review the regulations made under the ARCI Act of 1992. The report of the Panel, which included consideration of matters concerning compliance with ILO Conventions, was considered by the Interdepartmental Committee (IDC) set up for this purpose and by the Cabinet Committee on the Implementation of Social Assistance Reforms, which has now reported to Cabinet with the purpose of providing Ministers with details of the work programme, timetable and consultation strategy for the review process. Work on ILO issues has been put on a separate fast track for consideration by the Department of Labour and ACC since it is acknowledged that this work will have to be incorporated into the IDC's main work programme and the final policy advice to Ministers. Accordingly, the IDC will report by February 1995 to the Ministers of ARCI and Labour with the preliminary analysis of issues, options and a process for resolving issues of compliance with Conventions Nos. 12, 17 and 42. The Government intends to keep the ILO informed about this work as results become available.

The Government has also supplied comments made by the New Zealand Council of Trade Unions (NZCTU) and the New Zealand Employers' Federation.

The NZCTU challenges the Government's claim that workers who suffer occupational diseases continue to be compensated and that there is not a strict "burden of proof" on claimants. According to the NZCTU, workers are only compensated if they are able to meet the criteria and standard of proof required by the ARCI Act and, in its opinion, the ACC requires in practice a high level of proof by way of medical and other evidence and the so-called "investigative approach" can sometimes take several years before a claim is accepted or rejected.

On the other hand, the New Zealand Employers' Federation in its comments agreed with the Government that employees, when making application for treatment and compensation under the ARCI Act, faced no strict burden of proof of the kind imposed by a court of law. Any employee claiming under the Act must provide a certificate from a registered health professional, but in most instances this will be accepted as sufficient to support the claim made. It considers that, if the employee were engaged in the trades, industries or processes listed in the schedule to the Convention, there would be no difficulty whatsoever in establishing entitlement to the compensation and treatment under the Act; however, the inclusion of this schedule into the legislation has the potential to disadvantage rather than assist those to whose benefit it is directed to the extent that a number of diseases now usually accepted as occupational in origin are not covered by the list and would thus be excluded from the ambit of the ARCI Act.

The Committee notes the information provided by the Government, as well as the comments made by both occupational organizations. It also notes the Report of the ACC Regulations Review Panel of 11 August 1994, which refers to various issues raised with respect to the compensation of occupational diseases. In this situation, the Committee is bound once again to draw the Government's attention to the fact that by ratifying the Convention the Government undertook, in accordance with Article 2, to consider as occupational diseases those listed in the schedule appended to the Convention when they affect workers engaged in the specified trades, industries or processes, so that the worker concerned shall not have to provide proof of the occupational origin of his disease, which might in certain circumstances be particularly difficult. The ARCI Act presently in force in New Zealand is not in conformity with the Convention to the extent that it still does not contain such a list and does not therefore establish the presumption of the occupational origin of the diseases covered by it. As regards the concerns expressed by the New Zealand Employers' Federation concerning the limitative character of the list established by the Convention, the Committee wishes to reiterate its opinion that the inclusion in the national legislation of a list of occupational diseases would in no way diminish the protection afforded to workers, who would thus benefit not only from the presumption of the occupational origin applying to diseases included in the list, but also from the system of "full coverage" presently in force with regard to occupational diseases not included in the list. In addition, the Committee wishes to point out that the Convention would not prevent the adoption of a list which includes additional occupational diseases to those specified in the schedule appended to the Convention.

With these considerations in mind, the Committee further notes the Government's statement that it is now giving special and speedy consideration to the issues of compliance with Convention No. 42, inter alia, in the framework of the general review process of the Accident Rehabilitation and Compensation Insurance Scheme with preliminary results to be reported by the IDC by February 1995. The Committee therefore reiterates its hope that, in re-examining the question, the Government will not fail to take the necessary measures in the very near future to bring the national legislation into full conformity with the Convention by adopting a list of occupational diseases and corresponding trades covering at least those enumerated in the schedule to the Convention, so as to provide for the presumption of their occupational origin. The Committee trusts that the Government will be able to indicate the progress made in this respect in its next report.

[The Government is asked to report in detail in 1996.]

United Kingdom (ratification: 1936)

In its previous comments, the Committee urged the Government to re-examine its position towards supplementing the list of prescribed occupational diseases so as to conform to the Convention with regard to poisoning by the halogen derivatives of hydrocarbons of the aliphatic series, disorders due to ionizing radiation and anthrax infection. In its reply, the Government emphasizes that there was no intention to limit the coverage of its legislation so as deliberately to exclude certain disorders and that the incidence of all occupational diseases continues to be monitored and the list of diseases supplemented when it is considered necessary. It adds that the Industrial Injuries Advisory Council (IIAC) continues to keep the principles of the Convention in mind when considering whether the list of prescribed diseases for which benefit may be paid should be enlarged or amended. The Government, however, believes that all diseases which can be attributed with reasonable certainty to the nature of particular employments, rather than being a risk common to all persons, are in fact included in the list of prescribed occupational diseases, as required by the Convention.

The Committee notes this general statement. It also notes a number of specific regulations adopted by the Government to include certain new diseases and toxic substances in the list of prescribed occupational diseases, as well as the recommendations made to this effect by the IIAC, supplied by the Government with its report. It observes, however, that these measures still do not contain the necessary modifications to ensure that full effect is given to the Convention in the national legislation. It is therefore bound once again to draw the Government's attention to the points it raised in the request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, United Kingdom.*

Convention No. 44: Unemployment Provision, 1934

Algeria (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In reply to the Committee's previous comments, the Government states that it has examined the procedures for the establishment of an unemployment allowance. It adds that the regulations and procedures to govern this matter will certainly apply the principles set out in the Convention.
>
> The Committee notes this statement with interest. It expresses the hope that the unemployment allowance scheme will be established in the very near future so that full effect can be given to the provisions of the Convention which was ratified 30 years ago. It asks the Government to indicate any progress made in this respect.

Peru (ratification: 1962)

The Committee notes the Government's report which indicates that under Legislative Decree No. 650 of 23 July 1991, issuing the Act on compensation for time spent in employment, such compensation amounts to a social benefit to cover contingencies caused by lay-offs and to promote the worker and his family. The Government adds that the law on employment promotion (Legislative Decree No. 728, November 1991) establishes the right of workers to be paid compensation for unwarranted dismissal. The Government thus reiterates its opinion in previous reports that the legislation ensures economic protection for a worker who becomes unemployed to cover his expenditure until he finds a new job. In a communication of 10 June 1993 the Government confirms that compensation for dismissal is instead of unemployment insurance which would be extremely costly. The Government asserts that the relevant provisions of Peruvian law are in keeping with the definition of compensation contained in Article 1 of the Convention.

The Committee notes the foregoing but points out, as it did in earlier comments, that the legislation referred to by the Government does not constitute a system to provide unemployment benefit or allowance in conformity with the provisions of Convention

No. 44. The Committee would also like to point out that, in order to give effect to the provisions of the Convention, ratifying States must ensure a benefit or an allowance to persons who are involuntarily unemployed, by means of a scheme which may be a compulsory insurance scheme, or a voluntary insurance scheme, or a combination of compulsory and voluntary schemes, or any of these alternatives combined with a complementary assistance scheme (Article 1 of the Convention). In these circumstances, the Committee hopes that the Government will review the situation and that in its next report it will be able to indicate the measures adopted or contemplated to establish an unemployment protection scheme as required by the provisions of the Convention.

Spain (ratification: 1971)

The Committee notes the Government's report. It also notes the comments on the application of the Convention made by the General Union of Workers (UGT) and the Trade Union Confederation of the Workers' Committees (CC.OO), supplied by the Government together with its reply to the comments. Since this communication was received by the ILO only on 12 January 1995, the Committee has decided to examine it at its next session in November-December this year.

United Kingdom (ratification: 1936)

The Committee notes the information and documentation provided by the Government in its report, as well as the comments made by the Trades Union Congress (TUC) concerning the application of *Article 10 of the Convention*. These comments were transmitted by the Government in its communication dated 1 February 1995. The Government's reply to the above comments was received on 8 February 1995.

The Committee refers to the comments that it has made on unemployment benefit in the context of Part IV of the Social Security (Minimum Standards) Convention, 1952 (No. 102), which has also been ratified by the United Kingdom, and it draws the Government's attention to the following points:

1. *Article 10, paragraph 1, and Article 11* of the Convention. The Committee notes that Regulation 12E of Regulations No. 1328 of 1989 amended the rule by which a person could be disqualified from receiving unemployment benefit for having refused suitable employment, which rule corresponded to the provisions of Article 10 of the Convention. Now that the concept of suitable employment has been removed unemployment benefit can now be suspended (for a period not exceeding 26 weeks), under the terms of section 28 of the Social Security Contributions and Benefits Act of 1992, particularly in the following cases: (a) if the unemployed person "without good cause" has refused or failed to apply for any employment which has been properly notified to him as vacant, or has refused employment that has been offered to him; and (b) if he has "without good cause" neglected to avail himself of a reasonable opportunity of employment.

In its comments, the TUC refers to the guidelines established for the competent authorities who are responsible for applying the above legislation and notes that the conditions placed upon unemployed persons to determine their eligibility for benefit (particularly the obligation to show that they have a good chance of getting another job when they refuse employment which is not suitable, in the sense of the Convention) go beyond those set out in the Convention. In its reply to the TUC's comments, the Government refers to *Article 4* of the Convention, which leaves it possible to set "other requirements" by national laws or regulations for the purpose of showing whether the claimant "fulfils the conditions for the receipt of benefit or an allowance".

The Committee notes this information. However, it wishes to point out that some of the requirements referred to in Article 4 of the Convention are those specified in Article 5 of that instrument and include the completion of a qualifying period, a waiting period, attendance at a course of vocational instruction, the obligation to accept suitable employment (as defined in Article 10) and the provision of benefit for a limited period (Article 11).

The Committee has also examined the guidelines, provided by the Government with its report on Convention No. 102, setting out the various criteria on the basis of which adjudication officers determine whether or not a "good cause" exists. The Committee notes in particular that, according to the guidelines provided in AOG Vol. 10, which deals with the refusal of employment without good cause, the term "employment" may apply to any gainful employment, including self-employment, although in practice most cases concern "employed earner's employment". Furthermore, the official responsible, when determining the legitimacy of the reason, has to disregard, with the exception of the special rules relating to the "permitted period", any matter relating to the level of remuneration in the employment in question, including the fact that the wage offered is lower than that received by most other employees in that occupation. The Committee recalls that *Article 10, paragraph 1(b)(ii)* of the Convention provides that employment shall not be deemed to be suitable if the rate of wages offered is lower "than the standard generally observed at the time in the occupation and district in which the employment is offered".

With regard to the "permitted period", the Committee notes that section 29 of the aforementioned Act of 1992 authorizes persons who have just become unemployed, during a limited period, referred to as the "permitted period", to refuse to search for or accept employment which does not correspond to their usual occupation and for which the level of remuneration is lower than they are accustomed to receive. This "permitted period", under the terms of Regulation 12F of Regulations No. 1324 of 1989, covers a period of one to 13 weeks, depending on the experience and skills of the person and the employment opportunities available. The Committee notes in this respect that, in its report on Convention No. 102, the Government states that records are not kept on the numbers of unemployed persons who have been entitled to a "permitted period" of less than 13 weeks, but that it is unlikely to be large because in the majority of cases the full 13 weeks is allowed.

The Committee requests the Government to indicate the measures that it envisages taking to ensure that (a) unemployment benefit is not suspended under conditions or for reasons which go beyond those authorized by the Convention, and (b) that the duration of the benefit provided to any insured person who does not refuse to seek or accept suitable employment in the sense of Article 10 of this instrument, is in no case less than the period set out in Article 11 of the Convention, which provides that the right to receive unemployment benefit may be limited in duration to a period which shall not normally be less than 156 working days per year, and shall in no case be less than 78 working days per year.

2. The Committee also notes the comments made by the TUC on the new Jobseekers' Bill, which is currently at the committee stage in Parliament. The Committee hopes that during the adoption of the above Bill, account will be taken of the provisions of the Convention and the comments made by the Committee in this respect under point 1 above, and that the Government will not fail to provide detailed information on this matter.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Netherlands, New Zealand*.

Convention No. 45: Underground Work (Women), 1935

Dominican Republic (ratification: 1957)

The Committee notes the information supplied by the Government in its report.

In its previous comments the Committee noted the promulgation of the Labour Code (Act No. 16-92 of May 1992) which does not establish that women may not be employed in underground work. The Government indicates in its report that it is engaged in the necessary formalities, including consultation with the most representative organizations of employers and workers, to denounce the Convention.

The Committee notes this information and recalls paragraph 142 of its General Survey of 1988 on equality in employment and occupation, which states that elimination of the protection afforded to women cannot be deemed the only measure necessary in order to promote equality in employment and occupation. Other measures can be taken to satisfy the requirements of the promotion of equality.

The Committee asks the Government to indicate the measures taken to ensure that national legislation and practice are consistent with its commitments made by ratifying the Convention.

Zambia (ratification: 1964)

The Committee notes the Government's report in which it states that the Employment of Women, Young Persons and Children Act No. 14 of 1989, Cap. 505 of the Laws of Zambia has been amended by Act No. 4 of 1991 under which the provision relating to the protection of women to work underground has been repealed and expunged from the said Act following the ratification of the UN Convention on Elimination of All Forms of Discrimination Against Women and that the ILO Convention is therefore no longer being applied.

The Committee recalls its observation in paragraph 142 of its 1988 General Survey on Equality in Employment and Occupation where it pointed out that eliminating the protection afforded to women cannot be deemed the only measure to promote equality of opportunity and treatment in employment and occupation. The promotion of equality of opportunity and treatment in employment and occupation, without discrimination based on sex, should not be sought at the expense of a degradation of working conditions, and much less be based on such a degradation.

The Committee hopes that the Government will be able to re-examine the situation in the light of its obligation arising from its ratification of the Convention. The Committee requests the Government to continue to provide information on any measures taken in this respect.

Zimbabwe (ratification: 1980)

The Committee notes the observations by the Zimbabwe Trade Union Congress (ZCTU) sent by the Government confirming that women do not work underground in mines and that the terms of the Convention do not therefore apply. The ZCTU states that there have been instances of women working in small-scale mining operations, such as chrome strip-mining operations. It also states that it recommends that the Government denounce this Convention when it ratifies the new Safety in Mines Convention currently being prepared in the ILO.

The Committee also notes the information supplied by the Government in its report to the effect that the tripartite meeting held on 5 May 1994 reconfirmed that no women are employed underground.

The Committee asks the Government to indicate the measures taken to ensure that its national law is in conformity with its commitments made by ratifying the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Guinea-Bissau, Italy*.

Convention No. 47: Forty-Hour Week, 1935

Information provided by *Finland* in answer to a direct request has been noted by the Committee.

Convention No. 50: Recruiting of Indigenous Workers, 1936

A request regarding certain points is being addressed directly to *Guatemala*.

Convention No. 52: Holidays with Pay, 1936

Azerbaijan (ratification: 1992)

The Committee observes that section 73 of the Labour Code authorizes, in exceptional cases and with the worker's consent and the trade union committee's agreement, to postpone the annual holiday until the following year. In this connection, the Committee recalls that, in accordance with the Convention, every person to whom the Convention applies, shall be entitled to an annual holiday of at least six working days *(Article 2, paragraph 1, and Article 4 of the Convention)* and that consequently only part of the holiday which exceeds this minimum duration may be postponed *(Article 2, paragraph 4)*. It therefore hopes that the Government will take the necessary measures in the near future to bring the legislation into conformity with the Convention on this point.

The Committee also notes that the Government's report refers to legislation concerning annual leave, which was adopted in 1994. The Committee requests the Government to supply the Office with a copy of this law.

[The Government is asked to report in detail in 1996.]

Belarus (ratification: 1956)

The Committee observes that section 74 of the 1992 version of the Labour Code authorizes in exceptional cases and with the worker's consent and the trade union committee's agreement, to postpone the annual holiday until the following year. In this connection, the Committee recalls that, in accordance with the Convention, every person to whom the Convention applies, shall be entitled to an annual holiday of at least six working days (*Article 2, paragraph 1, and Article 4 of the Convention*) and that consequently only part of the holiday which exceeds this minimum duration may be postponed (*Article 2, paragraph 4*). It therefore hopes that the Government will take the necessary measures in the near future to bring the legislation into conformity with the Convention on this point.

[The Government is asked to report in detail in 1996.]

Central African Republic (ratification: 1964)

For several years the Committee has observed that section 129, second paragraph, of the Labour Code provides that the length of service entitling workers to holiday can be of up to 24 or 30 months in the case of an individual contract or a collective agreement. The Committee also has pointed out that *Article 2 of the Convention* sets forth the right to annual holiday with pay of at least six working days after one year of continuous service. It has further noted that in 1980 and 1988 a draft Decree was drawn up with the assistance of the ILO, providing for the amendment of section 129 of the Code so that persons covered by the Convention may benefit from a minimum holiday with pay every year.

In its previous observation, the Committee noted the information provided in the Government's report for the period ending 30 June 1990 and in the Conference Committee in 1991, from which it appeared that there had been no progress in amending the legislation in order to comply with Article 2. The Government indicated that the National Labour Advisory Committee was revising the Labour Code. At the Conference Committee in 1992, the Government indicated that it started the process to amend the Labour Code to comply with the requirements of the Convention. The Conference Committee urgently requested the Government to send the text of the drafted amendments to the ILO to determine whether the draft legislation is in complete conformity with the Convention.

The Committee notes that the Government has not transmitted a copy of the draft legislation, nor has it submitted a report on the application of the Convention. The Committee trusts that the draft legislation will be adopted as soon as possible in order to ensure full compliance with the Convention. It also hopes that the Government will soon indicate the concrete steps taken in this regard and supply copies of the relevant legislative text.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1996.]

Chad (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In a direct request, the Committee is again referring to certain questions under *Articles 2(1) and 7 of the Convention*, which have been the subject of its comments for several years. It hopes the Government will soon be able to indicate that progress has been made.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Côte d'Ivoire (ratification: 1961)

In its previous observation, concerning the application of *Articles 2 and 4 of the Convention*, the Committee recalled that section 108, subsection 2, of the Labour Code provides that a collective agreement or individual employment contract may provide for a qualifying period of between one year and 30 months of actual service for entitlement to holiday. The Committee pointed out that this provision is not consistent with the Convention, which specifies that any agreement — collective or individual — to relinquish the right to an annual holiday with pay of at least six working days after one year of continuous service is void. In its latest report, the Government indicates that the draft new Labour Code repeals section 108 and has been submitted to the National Assembly for approval during its session ending 31 December 1994. The Committee hopes that the new Labour Code will be enacted in order to give full effect to the provisions of the Convention and that the Government will supply a copy of the final text.

Cuba (ratification: 1953)

In earlier comments, the Committee noted that section 98 of the Labour Code of 1984 expressly permits the State Labour and Social Security Committee to authorize, for reasons of production of goods or supply of services, with the workers' agreement, in a number of branches, activities or workplaces, the replacement of holidays by supplementary remuneration. The Committee pointed out that such replacement of holiday leave by cash remuneration contravenes *Article 4 of the Convention* which prohibits any agreement to relinquish the right to an annual holiday. The Committee notes the Government's reply that regulations on working time and holidays continue to be drafted. It requests the Government to indicate, in its next report, any progress made in this respect and to supply copies of any relevant legislative texts if enacted.

The Committee also observes that section 95 of the Labour Code provides that an employer shall ensure, if it postpones a worker's holiday, that the worker takes not less than seven days' paid leave during the working year. It requests the Government to supply copies of state labour inspection reports containing information and statistics on the enforcement of holiday provisions.

Morocco (ratification: 1956)

Article 2, paragraph 1, of the Convention. In its previous comments, the Committee noted that section 218 of the draft Labour Code provides that the accumulation or division into parts of annual holiday cannot have the effect of reducing the annual holiday taken, to less than 12 working days falling between two weekly rest days. The Committee also noted the Government's indication that the draft had been approved by the Council of Ministers and that the discussion of the draft in Parliament began in May 1992. The Committee notes the Government's indication in its report for the period ending 30 June 1994, that the draft Labour Code is still under consideration. It hopes that the Labour Code will soon be enacted in order to give full effect to the provisions of the Convention. It also requests the Government to report on any progress achieved in this respect and to supply a copy of the new Code when it is adopted.

Myanmar (ratification: 1954)

In its previous observations, the Committee noted the Government's indication that the Factories Act (1951), the Shops and Establishments Act (1951) and the Leave and Holidays Act (1951) had been reviewed and redrafted taking into consideration the Committee's comments and that the revised texts were undergoing final review by the Laws Security Central Body. The Government's latest report indicates that the draft labour laws are still under review. The Committee would be grateful if the Government would indicate any more recent developments in this respect. It also hopes that the revised texts will be adopted and transmitted to the Office in the very near future.

Furthermore, the Committee trusts that the adopted texts will ensure the application of the Convention to all undertakings set forth in *Article 1 of the Convention*, particularly those small establishments, shops and offices not currently covered by the legislation, as well as building and public works and road transport undertakings. In this connection, the Committee reiterates to the Government the following points:

Article 2, paragraph 2. Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service, whereas under section 4(1) of the Leave and Holidays Act workers between 15 and 16 years are only allowed ten days.

Article 4. Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days, or, in the case of persons under 16 years of age, 12 working days) must be void, whereas section 4(3) of the same Act allows agreements to accumulate earned leave.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes with interest the information provided by the Government in reply to its previous observation and the detailed study on payment in kind undertaken with respect to the application of *Article 3 of the Convention*. It requests the Government to keep the Office informed of any specific examples which may be encountered within the framework of inspection visits demonstrating the manner in which vacation pay is calculated when a portion of the salary includes payment in kind, particularly as concerns the undertakings covered in *Article 1* of the Convention.
>
> *Article 2*. The Committee notes the indication in the Government's report that, by virtue of section 56 of the Labour Code, the 30-day leave entitlement provided to workers under section 54 may be divided into not more than two parts of 15 days each. It recalls, however, that section 59 of the Code permits the accumulation of two leave entitlements by agreement between the employer and the worker. There is no requirement set out in the legislation as yet to ensure that workers covered by the Convention take an annual holiday with pay of at least six working days. The Government has indicated in its report that it will study the amendment which was drafted in 1981 to ensure the application of the Convention in this regard. The Committee trusts that the Government will take the necessary measures in the near future to bring national legislation into conformity with the Convention and requests the Government to indicate, in its next report, the progress made in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1960)

The Committee notes the adoption of Legislative Decree No. 713 of 7 November 1991 and Supreme Decree No. 012-92-TR of 2 December 1992 on paid rest for workers in private activities.

Article 1, paragraph 1, of the Convention. Act No. 9049 of 13 February 1940 (repealed by Legislative Decree No. 713) granted workers in public and private enterprises, 30 days of annual holiday with pay. Since Legislative Decree No. 713 apparently applies only to workers in private employment, the Committee requests the Government to indicate what legislative provisions govern annual holidays with pay to workers in *public* undertakings and establishments, and to supply a copy of this legislation in the near future.

Article 2, paragraph 2. The Committee requests the Government to indicate in its next report what legislation grants young workers the right to annual holidays and hopes that the Government will transmit the relevant text to the Office. It also trusts that the Government will ensure that in practice, young workers receive annual holidays with pay of at least 12 working days after one year of continuous service.

Article 2, paragraph 3(b). Section 13 of Legislative Decree No. 713 states that annual holidays shall not be granted when the worker is disabled due to sickness or an accident, unless such disability occurs during holiday leave. The Committee draws the Government's attention to Article 2, paragraph 3(b), of the Convention which requires employers not to include interruptions of attendance at work due to sickness in a worker's annual holidays with pay. It requests the Government to indicate whether such absences which occur *during* holidays are deducted from annual paid leave.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bulgaria, Chad, Comoros, Dominican Republic, Greece, Hungary, Libyan Arab Jamahiriya, Mali, New Zealand, Ukraine.*

Convention No. 53: Officers' Competency Certificates, 1936

Argentina (ratification: 1955)

The Committee notes the communications from the Union of United Maritime Workers (SOMU), dated 29 March 1993, 2 December 1994 and 5 January 1995. Although these communications were duly sent to the Government, as yet no reply has been received.

The SOMU alleges that the new regulations on the training of ship's personnel in the merchant marine (REFOCAPEMM), issued by Decree No. 572/94 allows foreign seafarers with less training than their Argentine counterparts to work on ships registered in Argentina. Furthermore, embarkation documents are granted to minors and foreigners with very dubious qualifications, who do not speak Spanish, which heightens the risk of accident. In this connection the above-mentioned Union refers to the situation in the fishing sector and states that ships flying the Argentine flag employ Chilean labour which is less skilled than Argentine labour and refers to the case of the ship "Revolución productiva" whose crew is made up almost entirely of Russian nationals, and it is not known how their suitability was ascertained. Furthermore, there are cases of embarkation documents being granted by enterprises. Lastly, the SOMU alleges that certain sections of Decree No. 817/92 which provides for the drafting of the new REFOCAPEMM are unconstitutional.

The Committee would be grateful if the Government would make all comments it deems appropriate on the above allegations, in the light of *Article 3* (certificate of competency to perform the duties of master, navigational officer in charge of a watch, chief engineer or engineer officer in charge of a watch), and *Article 4* (requirements for granting a certificate of competency) *of the Convention.*

[The Government is asked to supply full particulars at the 82nd Session of the Conference and to report in detail in 1996.]

* * *

In addition, a request regarding certain points is being addressed directly to *Liberia*.

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936

Tunisia (ratification: 1970)

Articles 4 and 5 of the Convention (in conjunction with article 11). In reply to the comments that the Committee has been making for several years, the Government states that a Bill to amend certain sections of the Maritime Labour Code to bring it into line with the provisions of Conventions ratified by Tunisia, particularly Convention No. 55, has been examined by the Council of Ministers and submitted to the Chamber of Deputies; a copy of the Bill will be sent to the Office as soon as it becomes law.

The Committee trusts that the above-mentioned Bill will be adopted shortly and that it will enable the provisions of the Convention to the applied in respect of seamen engaged for voyages. It hopes that the Government's next report will contain detailed information on progress made in this respect.

* * *

In addition, a request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 56: Sickness Insurance (Sea), 1936

Requests regarding certain points are being addressed directly to the following States: *Algeria, Djibouti, Egypt*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Liberia (ratification: 1960)

Further to its previous comments, the Committee notes with interest that section 326(1) of the Maritime Law has been amended to require 15 years as the minimum age for employment or work on Liberian vessels, registered in accordance with section 51 of the Maritime Law (Title 22 of the Liberian Code of Laws). It further notes that such minimum age is required irrespective of any other provision of Title 22, including section 290(2)(a) which would otherwise have limited the application of Chapter 10 and section 326 (on minimum age) to persons employed on vessels of not less than 75 net tons. It notes however that section 326(3) permits persons under the age of 15, to occasionally take part in the activities on board such vessels under specified conditions. The Committee would be grateful if the Government would indicate how such special employment is limited to children of not less than 14 years of age, taking into account all the conditions specified by *Article 2, paragraph 2, of the Convention*.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Grenada, Turkey.*

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Pakistan (ratification: 1955)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In its previous comment, the Committee noted the adoption of the Employment of Children Act, 1991, which in section 2(iii) defines "child" as a person who has not completed his 14th year of age. Section 19 of the Act prescribes that the definition of "child" contained in the Factories Act, 1934, and the Mines Act, 1923, shall be deemed to be amended in accordance with the definition in section 2 of the above Act. The Factories Act, 1934, and the Mines Act, 1923, established the minimum age for access to employment at 15 years of age, in accordance with *Article 7, paragraph 4(a) and (b), of the Convention*. In a communication dated 3 August 1992, the Pakistan National Federation of Trade Unions considered that this has resulted in a contradiction regarding the minimum age for access to employment established in the legislation.
>
> The Government stated in its last report that children having attained the age of 14 years but not exceeding the age of 18 years fell under the category of "adolescent", as defined in the 1991 Act, and that the provisions of this Act are in addition to, and not in derogation of, the provisions of the Mines Act, 1923, and the Factories Act, 1934, and that therefore the rights of children under the age of 15 years were adequately protected and guaranteed. The Government also indicated the provincial and federal authorities which are responsible for implementing and ensuring the observance of the legislation relating to child labour.
>
> The Committee took due note of this information. Nevertheless, it recalls the terms of section 19 of the 1991 Act, under which the terms "child" and "adolescent" contained in the Acts of 1923 and 1934 above shall be deemed to have been amended in accordance with the definitions in section 2 of the 1991 Act. This results in an uncertainty with respect to the minimum age for admission to work covered by the Mines Act, 1923, and the Factories Act, 1934. The Committee requests the Government to indicate the measures which have been taken or are envisaged to ensure that children under the age of 15 years shall not be employed or work in mines, quarries and other works for the extraction of minerals from the earth, and in other dangerous or unhealthy occupations, in accordance with *Article 7, paragraph 4*, of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Guatemala*.

Convention No. 62: Safety Provisions (Building), 1937

Algeria (ratification: 1962)

1. The Committee notes the information supplied by the Government in its report for the period ending 20 June 1993. It notes with interest Executive Decree No. 93.120

of 15 May 1993 concerning the organization of occupational medicine, a copy of which was attached to the report.

2. In the comments that it has been making for a number of years, the Committee has noted the absence of special regulations concerning safety in the building industry, as required by the Convention. It notes with interest that, according to the Government's last report, specific regulations are in the process of being adopted which should cover the principles and standards set out in the Convention: these consist of a draft Decree issuing specific requirements for work in the building sector and another draft Decree respecting inter-enterprise safety and health committees in the building sector. The Government emphasizes that special attention is paid by the public authorities to all matters relating to the safety and health of workers in the building sector, which is considered to be one of the high risk sectors, and states that the enactment of the above regulations should take place in the near future. The Committee therefore hopes that the necessary provisions to give effect to the Convention will come into force in the near future and that the Government will supply a copy of them.

3. The Committee notes the statistics on the number and classification of occupational accidents for the years 1986-88 supplied by the Government with its report. The Committee hopes that, in accordance with *Article 6 of the Convention*, the Government will provide more recent statistics in future reports.

Convention No. 63: Statistics of Wages and Hours of Work, 1938

Requests regarding certain points are being addressed directly to the following States: *Barbados, Ireland.*

Convention No. 64: Contracts of Employment (Indigenous Workers), 1939

A request regarding certain points is being addressed directly to *Guatemala*.

Information supplied by *Panama* in answer to a direct request has been noted by the Committee.

Convention No. 67: Hours of Work and Rest Periods (Road Transport), 1939

Peru (ratification: 1962)

The Committee notes the Government's report which again indicates that the legislation on road transport is being revised to adapt it to the deregulation process, and that the drafting of new regulations is planned. The Committee recalls that the Government has provided the same information for many years, without any progress having been recorded.

In its report the Government indicates that a high proportion of vehicles are driven by their owners, that the country's road infrastructure is not of high standard and that the particularities of the country's geography means that it sometimes takes more than eight hours to cover short distances. These situations are not provided for as exceptions in the application of the Convention.

The Committee has also been making comments for many years, in particular, on the application of *Articles 7, paragraph 2; 11; 13, paragraph 2; 14; 15; 16, paragraph 1; and 18, paragraphs 2 and 3 of the Convention*. The Committee once again urges the Government to take the necessary steps to bring the national legislation and practice into conformity with these provisions of the Convention.

[The Government is asked to report in detail in 1996.]

Convention No. 68: Food and Catering (Ships' Crews), 1946

Argentina (ratification: 1956)

The Committee notes the information supplied by the Government in its report and, in particular, the indication that the reforms in the shipping sector are in no way inconsistent with the provisions of the Convention. It asks the Government to provide additional information on this matter in the light of the comments that the Committee has been making for several years concerning the application of *Article 5* (laws and regulations concerning food supply and catering arrangements), *Article 6* (system of inspection), *Article 9, paragraph 3* (inspection reports), *Article 10* (annual report) and *Article 12* (information collected and recommendations issued by the competent authorities), *of the Convention*. Please send the Office the text of the Regulations on Navigation at Sea and on Inland Waterways (REGINAVE), as amended.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied in reply to its previous observations, and the draft text of the Labour Act respecting navigable seaways and waterways which, according to the information contained in the report on the application of Convention No. 73, was adopted by the plenary sitting of the Legislative Assembly. The Committee would be grateful if the Government would supply a copy of the text which was adopted and additional information on the following points.
>
> *Article 1 of the Convention*. The Committee notes that Chapter Eight of the above text respecting fishing and coastal vessels contains no specific provision relating to food and catering on board coastal vessels. Moreover, the provisions contained in Chapter Five on accommodation and food are of a general nature and do not ensure that the Convention is applied to coastal vessels, even though they are sea-going. If the above draft text was adopted in its current state, the Committee would be grateful if the Government would state whether, as a consequence, any legislation relating to the application of the Convention is applicable to the above vessels.
>
> *Article 2(a) and Article 5, paragraph 2(a)*. The Committee notes the information concerning the application of these provisions of the Convention, in respect of which reference is made to sections 76, 77, 79 et seq. of the above draft text. However, it notes that the above sections refer to requirements which are to be set out in the internal rules of the vessel, to be approved by the Ministry of Labour and Social Welfare, and that they form the legal basis for the establishment of standards relating to the inspection of food and catering and the preparation of an annual report in this respect, as well as for the preparation of recommendations for shipowners. The Committee once again hopes that the necessary measures will be taken in the near future to regulate the provision of food and water on board ship, in accordance with these provisions of the Convention.

Article 3. The Committee notes that the Government's report contains no information on the application of this provision of the Convention. It hopes that its next report will contain information on the measures which have been adopted to secure the cooperation of the organizations of shipowners and seafarers in the application of the Convention and the results achieved in this respect.

Article 10. The Committee notes the list of companies authorized by the General Directorate of Consuls and Shipping to issue technical certificates covering the inspection undertaken in regard to the Convention, and the fact that around 90 per cent of the Panamanian Merchant Fleet possesses a current certificate of the inspection of crew accommodation and catering. The Committee would be grateful if the Government would supply a copy as soon as possible of the most recent reports published and indicate the bodies and persons concerned to which they are transmitted.

Article 11. The Committee notes the information supplied concerning vocational training courses for the catering staff of sea-going vessels which were provided between 1987 and 1992, and planned for 1993, by the National Vocational Training Institute (INAFORP), and the fact that the Panamian Institute of Labour Studies (IPEL) is directing and financing various training courses and seminars for seafarers and officials through the National Nautical School and various seafarers' organizations, in addition to the specialized courses provided through the INAFORP. The Committee would be grateful if the Government would supply details on the contents of these courses in respect of both training and further training.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Egypt*.

Convention No. 71: Seafarers' Pensions, 1946

Requests regarding certain points are being addressed directly to the following States: *Djibouti, Greece*.

Convention No. 73: Medical Examination (Seafarers), 1946

A request regarding certain points is being addressed to *Panama*.

Convention No. 74: Certification of Able Seamen, 1946

A request regarding certain points is being addressed directly to *Guinea-Bissau*.

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Bolivia (ratification: 1973)

In the comments it has been making for more than 20 years, the Committee has drawn the Government's attention to the absence of any provisions in laws or regulations to give effect to *Articles 2, 3, 4, 5, 6 and 7 of the Convention*.

On several occasions the Government has referred in its reports to the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare, which was to give effect to the above-mentioned provisions of the Convention. In its latest report the Government provides information on specific activities for organizing the operation of medical services in enterprises, which have led to the preparation of a Pilot Plan for a Medical Reconnaissance Service. According to the Government, the Pilot Plan will contribute to providing information and experience for implementing the Regulations on Medical Services in Enterprises which have already been drafted. According to the Government, the Plan should go into operation in the early part of 1995 after the most representative employers' and workers' organizations have been consulted. The Committee's comments, the Government concludes, will then be given effect.

The Committee takes note of this statement. It hopes that the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare and the Regulations on Medical Services in Enterprises will enable provisions to be adopted on the medical examination of young persons employed in industry, which will apply all the provisions of the Convention. The Committee asks the Government to provide information on progress towards the adoption of the above-mentioned Regulations and on any other measure taken to ensure compliance with the Convention.

The Committee suggests that the Government may wish to call upon the Office for technical assistance in this matter.

Article 2. The Committee draws the Government's attention to the fact that the medical examination provided for in the Convention is to certify not only that the young person is in good health, but also that he is fit for the work in question.

[The Government is asked to report in detail in 1996.]

Nicaragua (ratification: 1976)

The Committee notes the information supplied by the Government in its report.

For several years the Committee has been drawing the Government's attention to the need to adopt specific standards to ensure the application of the provisions of the Convention. In its report for 1980, the Government indicated that a committee to amend the Labour Code would be undertaking the task of revising the Code so that it would give full effect to the provisions of the Convention. Thereafter, on several occasions, the Government stated its intention of having the Labour Code revised for the above-mentioned purpose. In 1991 the draft code was submitted to the International Labour Office for comment. The Committee noted the draft and pointed out that it contained no provisions giving effect to the Convention.

In its latest report the Government makes no mention whatsoever of the above draft and gives information on the adoption of the Ministerial Decision of 26 July 1993 on occupational safety and health, and on the establishment, pursuant to article 4(1) of the above Decision, of the National Occupational Safety and Health Council which is the Government's advisory body on matters of protection and promotion of the health and safety of workers. The above Council, after noting the Committee's comments will present recommendations, according to the Government, on measures to be taken.

The Committee notes this information with interest. It hopes that the measures in question will be taken shortly and that they will give full effect to the provisions of the Convention.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Comoros, Israel, Luxembourg, Malta, Peru, Tunisia, Turkey.*

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946

Bolivia (ratification: 1973)

1. *Article 1 of the Convention.* In its report on Convention No. 77, the Government indicates that the adoption of the General Regulations on Health, Occupational Safety and Welfare will enable provisions on the medical examination of young people to be adopted. The Committee hopes that such measures will apply to young people who are employed in non-industrial jobs.

2. *Article 2.* See the comment under Convention No. 77.

3. The Committee asks the Government to take into consideration Recommendation No. 79 on the medical examination of young persons, particularly paragraph 14 on methods for applying such examinations to young people engaged, either on their own account or on account of their parents, in itinerant trading or any other occupation carried on in the streets or in places to which the public have access.

Cameroon (ratification: 1970)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

> In earlier comments, the Committee referred to the lack of any provisions in the national legislation enabling the Convention to be applied to children and young persons exercising an independent activity — employees or apprentices being covered by the provisions on medical examinations of Order No. 17 of 27 May 1969 respecting child labour. It asks the Government to provide information on the measures taken or under consideration to ensure application of the Convention to this category of children and young persons.
>
> In its reports, the Government has stated on several occasions that it intends to take appropriate measures.
>
> The Committee notes the Government's statement in its report received in 1990 that in view of the fact that the independent activities of children and young persons are carried on in the informal sector which is outside the control of the labour inspectorate, it will not be possible to envisage applying the Convention to this sector until some degree of control is exercised over the sector.
>
> While noting the difficulties referred to by the Government, the Committee points out that children exercising independent activities fall within the scope of the Convention (*Article 1, paragraph 1*). In order to ensure that the Convention is fully applied, it asks the Government to take the necessary measures to give effect to the provisions of the Convention concerning children and young persons and to provide information on progress made in this respect.
>
> In this connection, the Government may take into consideration the Medical Examination of Young Persons Recommendation (No. 79), and particularly article 14 on methods of enforcement of regular medical examinations for fitness for employment of children and young persons engaged, either on their own account or on account of their parents, in itinerant trading or any other occupation carried on in the streets or in places to which the public have access.

The Committee hopes that the Government will take the necessary action in the near future.

Nicaragua (ratification: 1976)

The Committee refers to its observation on Convention No. 77.

Portugal (ratification: 1983)

Article 7, paragraph 2, of the Convention. With reference to its previous comments, the Committee notes with satisfaction the amendment of section 18 of Decree No. 122/79. The new version of this provision establishes that applications by young people under the age of 18 years to engage in itinerant trading must be accompanied by a medical certificate demonstrating that the applicant has undergone a medical examination for fitness for work. The same provision establishes that health centres will carry out such examinations free of charge.

The Committee asks the Government to provide any available information on measures that have been taken to continue extending the protection granted under the Convention to minors and young people engaged in any other occupation conducted in the streets or any other place of public access. In this connection the Committee draws the Government's attention to the provisions of Recommendation No. 79 concerning the scope of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Comoros, Luxembourg, Malta, Peru.*

Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946

Requests regarding certain points are being addressed directly to the following States: *Italy, Kyrgyzstan.*

Convention No. 81: Labour Inspection, 1947

Argentina (ratification: 1955)

Article 6 of the Convention. Further to its previous comments, the Committee notes that, according to the Government's report, the change of government does not affect the stability of employment of labour inspectors and that such stability of employment would be legally protected within the National System of the Administrative Profession (SINAPA). The Committee would be grateful if the Government would provide full details on SINAPA indicating how the requirements of this provision of the Convention are met in law and practice.

Article 20. The Committee notes the Government's reply that there is no general information available concerning the activities of the inspection services as the coordination of such activities has been decentralized by virtue of the framework agreement concluded between the central Government and the provinces. It recalls that this provision of the Convention requires the central inspection authority to publish an annual general report on the work of the inspection services under its control; "central authority" meaning either a federal authority or a central authority of a federal unit (*Article 4, paragraph 2*). It recalls that no annual labour inspection report has been received since 1984. The Committee reiterates its previous comments that, in the absence of annual inspection reports that provide the practical information called for by the Convention, it is impossible to evaluate the application of the Convention or to determine what further measures need to be taken in order to ensure that workplaces are inspected as often and as thoroughly as necessary in compliance with *Article 16*. The Committee urges the Government to indicate the measures taken or envisaged in this regard.

Article 21. The Committee notes the information provided by the Government in its report that corresponds to the information required by this Article of the Convention. It points out to the Government that this information should be included in the annual report referred to above, which should also provide details concerning the inspection staff of each province (*subparagraph (b)*); the statistics of workplace liable to inspection and the number of workers employed therein *(subparagraph (c))*; statistics of inspection visits, violations and penalties imposed, industrial accidents and occupational diseases for each province *(subparagraphs (d) to (g))*.

The Committee is also addressing a direct request to the Government concerning other matters.

Austria (ratification: 1949)

Articles 3, paragraph 2; 10 and 16 of the Convention. The Committee takes note of the observation of 6 December 1994 made by the Branch Committee of the Staff Representation of the Central Labour Inspectorate (Fachausschuss beim Zentral - Arbeitsinspektorat) regarding the transfer of additional duties, under the Act on the Employment of Foreigners to the labour inspectorate which they consider to be contrary to Articles 3, paragraph 2, and 10 of the Convention.

It states that this transfer of additional duties to labour inspectors could interfere with the effective discharge of their primary duties, because at present only 310 labour inspectors were covering 250,000 enterprises which employ 3 million workers. They also state that the complicated procedures will add too heavy a burden on the inspectorate. In their view this would represent an unreasonable additional burden on the labour inspectorate which could not be fully mitigated by the 40 additional labour inspection posts that are to be made available.

The Committee notes the Government's acknowledgement that the supervision of illegal employment of foreigners as well as the participation in the punitive and other administrative procedures have been transferred to the labour inspectorate with effect from 1 January 1995, BGBL No. 994/1994. The Government also agrees that 40 additional posts will be accorded but that, according to the figures available in 1993, 208,765 enterprises and 2.5 million workers were covered by 315 labour inspectors. In addition the Government states that facilities such as electronic data processing is constantly being provided to the inspectorate. It further states that the former legal position and working conditions of the permanent staff of the labour inspectorate will not be affected at all as the workload will be carried out on the basis of strict division between the old and new duties. The Government also indicates that the only change will be that in the future as regards cases of infringements of the legislation concerning foreigners, the permanent staff will notify the newly installed supervisory team for foreigners of the competent labour inspectorate composed of the additional posts and not the official agencies of the labour market administration as before.

The Committee notes that the Branch Committee considers that, due to the future harmonization of Austrian legislation with European standards, the number of employees in the labour inspectorate has to be increased in order to carry out the additional tasks transferred by new legislation. The Government maintains that in the long run the implementation of relevant European Union (EU) regulations will lead to a considerable easing of the burden on labour inspectors, because the main burden for the additional duties will be borne by employers, specialists on prevention and safety advisers.

The Government refers to the National Employee Protection Act (BGBL No. 450/1994) which shifts matters concerning employee protection to the enterprise level. The Committee notes that the Government acknowledges that initially labour inspectors will be faced with new challenges as they will be responsible for assessing the suitability and effectiveness of the internal health and safety systems in the enterprises. Additional burdens will eventually decrease.

The Committee would be grateful if the Government would provide further information concerning the practical application of the new legislation in particular as regards the workload resulting from: cases related to the employment of foreigners as well as from the shift to internal protection systems at the enterprise level. The Committee would be grateful if the Government would provide further information on any legislation that implements the EU regulations and on how the Government intends to deal with the additional burden of labour inspectors during the transition period.

Chad (ratification: 1965)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> *Articles 10, 11 and 16 of the Convention.* The Committee notes that shortages of material means and qualified staff persist in hampering the application of these Articles of the Convention and that there has been no resolution of the difficulties commented upon by the Committee for several years. The Committee recalls the requirements as to an adequate number of inspectors with all necessary facilities (especially transport). It asks the Government to indicate in its next report any measures whatsoever taken to make the most out of the resources available, if not to increase resources.
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> *Article 12, paragraph 2, and Article 13, paragraph 2(b).* Since 1968 the Committee has been drawing the Government's attention to the need to empower inspectors, on the one hand, to decide whether or not they should notify the employer of their presence at the workplace and, on the other, to make or have made orders requiring measures with immediate executory force in the event of imminent danger to the health or safety of the workers. In 1990, the Committee noted that a committee had been established to revise the Labour and Social Welfare Code with a view to bringing national legislation into conformity with the Convention, and that the Code had been revised with the assistance of the ILO. The Committee now notes that the revised Code has not yet been adopted, although it is being given priority. It also notes the indication in the Government's most recent report, repeating information provided in 1971, that labour inspectors may make orders with immediate executory force. Since 1972, the Committee has observed that section 202 of the Labour and Social Welfare Code, as applied, empowers the labour inspector to give an employer no less than two days to remedy a situation, even when it is dangerous to the health or safety of the workers in cases of extreme urgency, and that this is not sufficient to deal with imminent dangers, such as a risk of a fall of earth, asphyxia or explosion, which may materialize before the minimum time-limit of two days has expired. The Committee is bound, once again, to express the hope that the Government will soon be able to report that the necessary changes to legislation have been made. It would in the meantime be grateful if the Government would provide information on the manner in which the existing provisions are applied in practice.

> *Articles 20 and 21.* In reply to the Committee's earlier comments the Government states that the annual reports on inspection are being completed. The Committee hopes that the Government will ensure that, in future, annual inspection reports are drawn up containing information on all the subjects listed under Article 21. It trusts that these reports will be published and communicated to the ILO within the period fixed in Article 20.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

France (ratification: 1950)

The Committee notes the Government's report and the report on labour inspection in 1992.

It notes the information on the application of the Convention submitted by the French Democratic Confederation of Labour (CFDT) on 9 December 1994.

The Committee also notes the observations presented by the CGT National Union of Social Affairs on 4 November 1994 and by the National Federation of Labour Inspection Unions dated 22 June, 16 September and 17 November 1994, concerning in particular the draft reform of the organization of the decentralized departments of the Ministry of Labour, Employment and Vocational Training.

In its reply received on 16 January 1995, the Government refers to this draft decree.

The Committee also notes the communication from the CGT National Union of Social Affairs received on 1 February 1995. It notes that the above union comments on several provisions of Decree No. 94-1166 of 28 December 1994 concerning the organization of the decentralized departments of the Ministry of Labour, Employment and Vocational Training, the implementation of which appears to raise a number of problems with regard to the Convention, particularly concerning the functions of labour inspectors *(Article 3 of the Convention)*, stability and independence *(Article 6)*, number of inspectors *(Article 10)* and necessary facilities *(Article 11)*.

The Committee will examine this matter at its next session in November 1995. It therefore asks the Government to send its comments on the above-mentioned observations in its next detailed report on the application of the Convention this year.

Lastly, the Committee notes that the Governing Body has declared receivable, at its 261st Session, in November 1994, the representation made by the World Federation of Trade Unions under article 24 of the Constitution, alleging failure by France to comply with the Labour Inspection Convention, 1947 (No. 81), and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), for the territory of French Polynesia.

Haiti (ratification: 1952)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> The Committee notes the information received from the Government in July 1992, although no report under article 22 of the Constitution has been received.
>
> *Articles 10, 11 and 16 of the Convention.* Further to its previous comments, the Committee notes that the number of inspectors has increased (from 18 in 1986 to 65 in 1991); a survey was to be conducted to determine the number of establishments throughout the country; and the number of establishments visited in August 1991 was 520. The Committee hopes the Government will continue to describe measures taken or envisaged to make sure the inspection service is able to monitor the application of the relevant legal provisions.

> *Article 14.* Further to its previous comments concerning measures which would lead to occupational accidents and diseases being notified to the labour inspection services, the Committee notes that the administrative reform anticipated has not become effective. It hopes the Government will indicate any developments with a view to giving effect to this Article of the Convention.
>
> *Articles 20 and 21.* Further to its previous comment, the Committee notes that the Government has not published an annual report on the activities of the inspection services, but the necessary information is compiled each month. The Committee trusts the Government will supply annual inspection reports in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Iraq (ratification: 1951)

Further to its previous comments made over several years, the Committee notes the particularly brief government report indicating that the Government will do its best in the future to publish annual labour inspection reports within the time-limits set in *Article 20 of the Convention* and to ensure that they contain all relevant information on the activities of the inspection service including on all those listed in *Article 21* and in particular Article 21(c) (statistics of workplaces liable to inspection), Article 21(d) (statistics of inspection visits), and Article 21(e) (statistics of violations and penalties imposed). It reiterates the need for the Government to submit reports on the application of this Convention in accordance with the report form approved by the Governing Body. The Committee trusts the Government will not fail to take the necessary measures very shortly to ensure the full implementation of the Convention.

Jamaica (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> Further to its previous observations, the Committee notes the discussion in the Conference Committee in 1993, which itself noted the Government's request for technical assistance from the Office in respect to labour inspection. It regrets to note further, however, that neither the Government's report on the Convention nor any annual inspection reports (*Articles 20 and 21 of the Convention*) have been received. The Committee hopes the Government will indicate what measures have been taken as regards these matters (referred to again in a direct request) and those raised again below.
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> *Article 13, paragraphs 2(b) and 3.* For many years the Committee has been commenting that there are no provisions in national legislation empowering factory inspectors to require measures with immediate executory force in the event of imminent danger to the health and safety of workers. In the Conference Committee discussion in 1990, the Government representative stated that legislative amendments were being pursued through the tripartite Labour Advisory Committee. The Committee now notes the Government's indication that since its last report no change has occurred in the situation. The Committee once again expresses its hope that the necessary measures will soon be taken.
>
> *Article 14.* In its last observation, the Committee noted that the question of a requirement of notification of occupational diseases was being pursued by the competent authority. The Committee now notes that there has been no change in this respect. It again expresses the hope that progress will be made.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malawi (ratification: 1965)

The Committee notes the information provided by the Government in reply to its previous comments. It would be grateful if the Government would provide further information on the points raised below.

Articles 10 and 16 of the Convention. The Committee notes that there are seven factory inspectors (for aspects of safety, health and welfare of workers), and 13 labour inspectors (for general questions such as wages, hours of work, overtime, leave pay and other working conditions) who are responsible for inspecting the 4,340 workplaces employing 473,263 workers that are liable to inspection in the three regions of the country. Please indicate what measures are contemplated to increase the number of labour and factory inspectors to a sufficient level to secure the effective discharge of their duties, having due regard to all the factors mentioned in Article 10(a) of the Convention. Please indicate also the measures taken or contemplated to ensure adequate frequency and thoroughness of the inspection visits.

Article 11. The Committee would be grateful if the Government would provide general information on the arrangements made to furnish labour and factory inspectors with local offices that are suitably equipped in accordance with the requirements of the service and accessible to all persons concerned. The Committee notes that the Government's report indicates that due to inadequate funds, transportation is only provided to the three regional offices and to inspectors in the field, on a rotational basis. It further indicates that officers are encouraged to purchase their own vehicles which they can then use to carry out inspection visits and that travelling and other incidental expenses like food and accommodation are reimbursed or fully paid for by the Government. Please indicate what kind of encouragement is given to labour and factory inspectors to purchase their own vehicles and whether other expenses resulting from the use of private vehicles for inspection visits are taken into account in reimbursing them for transportation expenses.

Articles 20 and 21. The Committee notes that annual inspection reports have not been published but that the Government is fully aware of their importance. The Committee notes the statistics of the workplaces liable to inspection and the number of workers employed therein as required by paragraph (c) of Article 21. It trusts the Government will take the necessary measures to publish and communicate such reports within the time-limits provided for in Article 20 and that they will contain all the particulars listed in Article 21 including those in paragraphs (a), (b), (d), (e), (f) and (g).

The Committee wishes to suggest to the Government if it would consider exploring the possibility of seeking the technical assistance of the Office in taking measures to ensure that effect is given to the provisions of the Convention.

Malaysia (ratification: 1963)

Further to its previous comments, the Committee notes the information contained in the Government's report. It would be grateful if the Government would provide more clarifications on the points raised below.

Articles 3, paragraph 2; 9, 10 and 16 of the Convention. The Committee notes that the Government's report does not directly reply to its previous comments regarding the increase in non-inspection work performed by inspectors that was preventing an increase of the number of inspection visits to a desired level. The Government's report indicates that there has been an organizational restructuring of the inspection system with regional offices being divided into two sections, namely the enforcement service carrying out routine statutory inspections of workplaces and machinery and the technical services performing non-routine functions such as accident investigation, prosecution, promotion and approvals. The Committee further notes that the Government is preparing the introduction, in early 1995, of a comprehensive integrated inspection check-list with assessment standards that will allow quantification of the safety and health standards of workplaces and thus facilitating integrated inspection visits that are more objective and of a higher quality. The Government also states in its report that it expects the introduction of the integrated system of inspection to replace the separate but redundant statutory inspections for safety and for hygiene matters, to permit a more flexible, efficient and effective use of limited manpower in this respect. The Government also expects the introduction in 1994 of a new system of inspection by sector regarding statutory inspections, to provide a clearer picture of the various situations within a sector throughout the different states through the comparison of data and better planning. It further states that this should also help ensure that workplaces are inspected as often and as thoroughly as is necessary within the meaning of Article 16 of the Convention. The Committee welcomes the measures taken and those that are in the process of introduction or planning aimed at ensuring a better application of these provisions of the Convention. The Committee hopes the Government will continue to provide full details of developments in this respect.

Article 5(b). Further to its previous comments relating to the observations of the Malaysian Trades Union Congress (MTUC) of 1989, the Committee notes the Government's reply concerning the changes introduced thus far as well as the enactment, at the initiative of the tripartite National Advisory Council for Occupational Safety and Health, of the 1994 Occupational Safety and Health Act (OSHA), which Act is based on the concept of self-regulation and places the primary responsibility for ensuring safety and health at the workplace on employers and workers. The Government states that the OSHA incorporates provisions promoting proactive consultations and cooperation between the Government, management and workers in efforts to maintain and upgrade safety and health at work as evidenced by its sections that provide for the formation of a tripartite National Council for Occupational Safety and Health to replace the National Advisory Council and the creation of safety and health committees in places of work having at least 40 workers. The Committee hopes these measures will in practice enable the Government to ensure the collaboration between officials of the labour inspectorate and employers and workers or their organizations as required by this Article of the Convention. The Committee would be also grateful if the Government would supply a copy of the OSHA of 1994 with its next report.

Articles 17 and 18. The Committee notes the information supplied by the Government in reply to its previous comments which related to the observations of the MTUC of 1989 concerning the inadequacy of the penalties for violation of enforceable provisions and for obstruction of inspectors. The Government indicates the OSHA provides for more severe penalties.

Articles 20 and 21. The Committee recalls its previous comments where it expressed the hope that annual inspection reports will be published and transmitted to the Office within the periods prescribed by Article 20 of the Convention and that they will contain all the required information, particularly statistics of workplaces liable to inspection and numbers of workers employed in them (Article 21(c), as well as statistics of violations and penalties imposed (Article 21(e)).

Sri Lanka (ratification: 1956)

Further to its previous comments, the Committee notes the information provided in the Government's report.

Articles 10, 11, 13 and 16 of the Convention. The Committee notes the information that action is being taken to increase the number of labour inspectors by creating 50 new positions in order to strengthen the inspectorate and adapt it to the needs of the time. The Committee notes that no information is provided regarding the observations of the Jathika Sevaka Sangamaya concerning the persistent shortage of funding for inspectors. It recalls the observations previously made by the same workers' organization relating to the working conditions in the garment factories employing female workers and notes from the Government's report that 818 inspections took place in the garment manufacturing sector. The Committee notes the information provided regarding the observations of the Lanka Jathika Estate Workers' Union referring to the working conditions and special risks and hazards faced by workers in the growing number of self-employed small industries and the fast-growing industries in the free trade zones, using highly sophisticated equipment, dangerous chemicals and extra hours of work for women and young persons, including night work. The Government states that prior to the grant of approval for the establishment of such factories, their designs and plans are examined for safety and health of the working environment (including ventilation, temperature, safety exits in emergencies, and sanitary and other facilities). It also indicates that factory inspecting engineers including those attached to the respective District Factory Inspecting Engineers' Office, routinely inspect the safety and health of the working environment in these factories to ascertain that all high-risk machines and equipment are periodically examined and that protective devices are functioning effectively. The Committee notes the Government's reply to the observations of the Ceylon Workers' Congress (CWC) regarding inspections in the State Mining and Minerals Corporation and the State Gem Corporation. The Government states that labour inspectors and the Mineralogist Department's inspectors, medical officers, and licensed engineers are empowered to inspect, both routinely and on receipt of complaints, mines and quarries which are relatively small in size. The Committee would be grateful if the Government would continue to provide further information on all these points.

Articles 20 and 21. The Committee recalls its previous observation in which it had noted the information contained in the Labour Administration Reports for 1988, 1989, 1990 and 1991. It wishes to point out that these reports do not fully meet the requirements of Articles 20 and 21 of the Convention that annual labour inspection reports should be compiled and published within the time-limits specified and that they should contain all the particulars listed therein. It hopes the Government will take the necessary measures to ensure that annual labour inspection reports are published and sent to the Office as required by the Convention.

Zaire (ratification: 1968)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

> In its previous comments, the Committee noted the need to prepare and publish annual inspection reports in accordance with *Articles 20 and 21 of the Convention*, and the difficulties encountered by the Government in the application of *Article 7, paragraph 3* (the vocational training of labour inspectors), *Article 10* (the number of labour inspectors), *Article 11* (the transport and other facilities furnished to labour inspectors) and *Article 16* (the frequency of inspections). It notes that the Government has supplied very incomplete reports

on the activities of the inspection services for the years 1989, 1990 and 1991. These reports, supplemented by brief information in the report on the Convention, appear to confirm that the objective set out in the Convention, which is to ensure that workplaces are inspected as often and as thoroughly as necessary, despite the efforts of the labour inspectors, is still implemented in a very unsatisfactory manner. The Committee notes in this context that the ILO provided assistance to the Government in 1990 to retrain labour inspectors, and that the Government would like to see this assistance renewed, but that, in view in particular of the lack of resources of the inspection services, this assistance cannot by itself ensure that the Convention is applied. In this context, the Committee also notes the information contained in the annual report for 1991 concerning the impact of social and political events in the country and the hope placed in the National Sovereignty Conference by the workers.

The Committee recalls the important contribution that labour inspection can make to economic development and the sound management of rare resources (see paragraphs 55 to 57 of its General Report of 1992). It trusts that the Government will find the means to overcome its difficulties in the application of the Convention by endeavouring, in particular, to supply the inspection services with the human and material resources which are essential for them, and that it will supply all the necessary information in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bahrain, Burundi, Costa Rica, Gabon, Ghana, Guinea-Bissau, Jamaica, Kenya, Mozambique, Panama, Singapore, Solomon Islands, United Arab Emirates.*

Convention No. 87: Freedom of Association and Protection of the Right to Organize, 1948

Australia (ratification: 1973)

With reference to its previous comments, the Committee notes with satisfaction that section 75 of the Industrial Relations Reform Act (hereinafter, the "Reform Act") of 1993 amends section 189 of the Industrial Relations Act of 1988 bringing the previous requirement of 10,000 minimum membership in employees' and employers' associations for registration in the federal industrial relations system down to 100 members. Furthermore, section 76 of the Reform Act repeals section 193 and 193A of the IRA which previously required a Presidential member of the Australian Industrial Relations Commission to review the continued registration of organizations having fewer than 1,000 (stage 1 review) and 10,000 employees (stage 2 review).

Furthermore, the Committee notes with satisfaction that a number of provisions of the Reform Act respond to concerns raised by the Committee in previous comments with respect to the right to strike. In particular, the Reform Act repeals the ban on officers from engaging in strikes which interfered with public services or utilities (section 53) and provides greater protection of workers against dismissal for engaging in or proposing to engage in industrial action (section 80).

The Committee is raising a number of other points in a request addressed directly to the Government.

Bangladesh (ratification: 1972)

The Committee notes the information provided by the Government in its latest report. It recalls that its previous comments concerned the following points:

- the right of association of persons carrying out managerial and administrative functions;
- the right of association of public servants and the denial of the right to organize of certain groups of workers in a number of sectors of the economy, inter alia, rural electrification, civil aviation, jute research, bank security printing press;
- restrictions on the range of persons who can hold office in trade unions;
- the extent of external supervision of the internal affairs of trade unions;
- the "30 per cent" requirement for initial or continued registration as a trade union;
- denial of the right to organize of workers in export processing zones; and
- restrictions on the right to strike.

The Committee notes with interest that the Government has been undertaking a review of its labour legislation by a tripartite National Labour Law Commission (NLLC) and that a new Labour Code has been drafted which would appear to extend coverage of the labour legislation, including the right to organize, to certain categories of workers previously excluded, such as the workers employed by the Civil Aviation Authority and those working at the Jute Research Institute. The Committee notes with regret, however, that a number of provisions in the previous legislation which were not in conformity with the Convention have remained unchanged in the draft Labour Code. It therefore expresses the firm hope that the Government will take the necessary measures to bring its legislation into conformity with the provisions of the Convention with respect to the following points.

Managerial and administrative functions

In its previous comments, the Committee had noted the Government's statement that, while persons carrying out managerial or administrative functions are excluded from the definition of "worker" in the Industrial Relations Ordinance, 1969, and thus denied the right of association set out in section 3(a) of the Ordinance, such persons can form associations in order to further their professional interests. The Committee recalled that forbidding such persons from joining unions representing other workers was not necessarily incompatible with the requirements of the Convention provided that they had the right to form their own organizations to defend their interests, and that the categories of managerial staff were not so broadly defined that the organizations of other workers in the establishment or branch of activity were weakened by being deprived of a substantial proportion of their actual or potential membership (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 87). The Committee once again requests the Government to indicate which legislative provisions ensure that persons carrying out managerial and administrative functions may establish and join their own associations to further their occupational interests, and to provide information on the number and size of such associations as well as their functions.

Right of association of public servants

The Committee notes the Government's indication that its legislation is in conformity with the requirements of the Convention with respect to public servants. In its previous comments, the Committee had noted the Government's statements that public servants, while not covered by the Industrial Relations Ordinance, do have the right to form associations to advance their causes. The Committee had recalled, however, that such associations were subject to certain restrictions relating to their activities (in particular, as regards their rights to issue publications) by virtue of the Government Servants (Conduct) Rules, 1979, which were not in conformity with *Articles 2 and 3 of the Convention*. The Committee recalls that measures which impose prior restraint on the subject matter of trade union publications are contrary to the right of workers' organizations to organize their administration and activities and to formulate their programmes without interference from public authorities. The Committee requests the Government to indicate the measures taken or envisaged to bring these rules into conformity with the requirements of the Convention.

Furthermore, while noting that the draft Labour Code extends its coverage to workers in the Civil Aviation Authority and the Jute Research Institute, the draft would appear to continue to exclude workers at the Security Printing Press and public servants. The Committee expresses the firm hope that the necessary measures will be taken in the near future to ensure that all workers, without distinction whatsoever, are guaranteed the right to organize and requests the Government to indicate the progress made in this regard.

Restrictions on the range of persons who can hold office in trade unions

In its previous comments, the Committee noted that section 7-A(1)(b) of the Industrial Relations Ordinance prevents persons who are not current or former employees of an establishment or group of establishments from becoming members or officers of a trade union in such an establishment or group of establishments. Furthermore, with reference to section 3 of Act. No. 22 of 1990 amending the Industrial Relations Ordinance which provides that a dismissed worker shall not be entitled to become an officer of a trade union, the Committee considered that the provisions are contrary to the right of workers' organizations to elect their representatives in full freedom. It expresses the hope that, following the review of the labour laws, the Government will amend these provisions to provide for greater flexibility in relation to office-holding in trade unions by admitting as candidates persons who have previously been employed in the occupation (including workers who have been dismissed) or by exempting from occupational requirements a reasonable proportion of the officers of an organization.

External supervision

In its previous comments, the Committee noted that the powers of the Registrar of Trade Unions to enter trade union premises, inspect documents, etc. under Rule 10 of the Industrial Relations Rules, 1977, were not subject to judicial review. The Committee draws the Government's attention in this regard to paragraph 125 of its *General Survey on Freedom of Association and Collective Bargaining* in which it has considered that there is no infringement of the right of organizations to organize their administration if the supervision by the public authorities of the organization's financial situation is limited to the obligation to submit periodic financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law. In any event, the Committee has concluded that the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity. Noting that there appear to be no limits to the Registrar's power under Rule 10(2) to inspect the account books of a registered union and that this power is not subject to any judicial review, the

Government is requested to amend this provision according to the above-mentioned principles.

The 30 per cent requirement

For several years now, the Committee has been asking the Government to review sections 7(2) and 10(1)(g) of the Industrial Relations Ordinance which impose, respectively, a membership requirement of 30 per cent of the total number of workers employed in the establishment or group of establishments concerned for a union to be registered, and permit dissolution if membership falls below that level, in order to bring them into conformity with *Article 2 of the Convention*. The Government has once again indicated that it considers this requirement reasonable and adds that it helps check multiplicity of trade unions which adversely affects workers' interests. It adds, however, that the recommendation of the NLLC in this respect is being studied. The Committee, considering that these provisions extensively restrict the right of all workers to organize, hopes that the necessary measures will be taken in the near future to ensure full conformity with *Article 2 of the Convention* and requests the Government to keep it informed of any progress made in this regard.

Denial of the right to organize in export processing zones

The Committee notes with regret from the Government's report that the amendments proposing the extension of the provisions of the Industrial Relations Ordinance and other related laws to workers in export processing zones (EPZs) have not yet been adopted. While noting that some workers in these zones seem to have been allowed to form trade unions in anticipation of these amendments, the Committee once again requests the Government to indicate the number of workers' organizations which have already been set up in the EPZs, the size of their memberships and their functions, as well as to indicate the progress made in extending the coverage of the Industrial Relations Ordinance to these workers.

Restrictions on the right to strike

The Committee notes the statement in the Government's report that the economic condition of the country does not permit workers to go on frequent strike as this would pose a threat to maintaining their livelihood and cripple the economy. Nevertheless, the Committee must recall the concerns which it has been raising over a number of years with respect to several provisions in the Industrial Relations Ordinance which limit strikes and other forms of industrial action in a manner which is not in conformity with the principles of freedom of association. In particular: (i) the necessity for three-quarters of the members of a workers' organization to consent to a strike (section 28); (ii) the possibility of prohibiting strikes which last more than 30 days (section 32(2)) and of prohibiting a strike at any time if it is considered prejudicial to the national interest (section 32(4)) or involve a "public utility service" (section 33(1)); and (iii) the nature of the penalties which may be imposed in respect of participation in unlawful industrial action (sections 57, 58 and 59), including the possibility of imprisonment.

Mindful of the difficulties which might arise during acute national crises, the Committee recalls that it has always recognized that in such cases the right to strike may be circumscribed for a limited period of time. Furthermore, strike action may be restricted or prohibited in relation to public servants exercising authority in the name of the State or for workers in essential services in the strict sense of the term, that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in the case of an acute national crisis. The Committee considers, however, that the above-mentioned restrictions on strikes and other related actions in the Industrial Relations Ordinance go beyond the above situations and categories of workers. It expresses the firm hope that the Government will take the necessary steps in the near future to amend these provisions in order to bring them into full conformity with the Convention.

The Committee would also remind the Government that the assistance of the International Labour Office is available on any of these points if so desired.

Belgium (ratification: 1951)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments on the need to ensure by law that objective, predetermined and detailed criteria are adopted in establishing rules for the access of workers' and employers' occupational organizations to the National Labour Council and the various public and private sector committees in which binding collective agreements are formulated, the Committee takes due note of the Government's statement in its report that the Minister of Employment and Labour is currently preparing a Bill setting out such objective criteria, which will be submitted to the social partners for their opinion and to the Government for approval.
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> According to the Government, the Minister will state and explain in writing the "unwritten" objective criteria for admission which the Government has applied for some time and which are accepted by the Belgian judiciary. In order to sit on the National Labour Council, occupational organizations must, among other requirements, be nationwide bodies, be present in the great majority of sectors, have stability and a minimum number of contributing members to be checked by an objective body.
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> The Committee also notes the Government's indication in its report that the National Confederation of Executive Staff (CNC) has been unable to demonstrate that it is representative — it reportedly obtained only 1.76 per cent of the total number of votes cast by all categories of workers at the social elections in June 1991 and is not interoccupational in nature — and did not obtain a seat on the National Labour Council when the latter's membership was renewed in December 1990.
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> The Committee recalls that it has been commenting on this matter for many years, and expresses the firm hope that the Government will do everything in its power to ensure that the Bill currently being prepared is adopted in the very near future, in order to preclude any partiality or abuse in the choice of organizations authorized to sit on these bodies, and asks the Government to indicate any progress made in this respect in its next report.

Bolivia (ratification: 1965)

The Committee notes the Government's report, the information supplied by a Government representative and the discussion that took place in the Conference Committee in 1993. The Committee recalls that for many years its comments have been referring to the following points:

- the denial of the right to unionize to public servants (section 104 of the General Labour Act of 1939);
- the impossibility of setting up more than one union in an enterprise (section 103 of the above Act);
- the wide powers of supervision of the labour inspectorate over the activities of trade unions (section 101 of the Act);

- the prohibition from holding trade union office placed upon persons who do not normally work in the enterprises and are not included in wage and salary lists (section 6(c) of the Legislative Decree of 1951);
- the termination of the mandate of trade union leaders when they retire from their job (section 7 of the above Legislative Decree);
- the requirement that members of the governing board have to be of Bolivian nationality (section 138 of the regulatory decree issued under the General Labour Act);
- the possibility of dissolving trade unions by administrative authority (section 129 of the Decree issued under the Act);
- the excessive number required to call a strike (three-quarters of the employees who are in service) (section 114 of the Act and section 159 of the Decree issued thereunder);
- the prohibition of strikes in all public services (section 118 of the Act), including banks and public markets (section 1(c) and (d) of Supreme Decree No. 1958 of 1950);
- the recourse to compulsory arbitration as a means of putting an end to a strike (section 113(c) of the Act); and
- the prohibition of general and solidarity strikes under penalty of six months' detention and six months' internal exile, with a doubling of these sentences in the event of a repetition of the offence (sections 1 and 2 of Legislative Decree No. 02565 of 1951).

The Committee takes due note of the statements by a Government representative during the Conference Committee in 1993 to the effect that the first three matters raised by the Committee of Experts were taken into account in the preliminary draft text of the new General Labour Act and that the other provisions referred to in the Committee's remaining comments have fallen into abeyance and are not applied in practice. By way of illustration, in recent years there is no known case of a trade union which has been dissolved by administrative authority. In practice workers, including employees in the public sector, can call a strike without needing to comply with the requirements and arbitration is no longer compulsory. Over the past ten years, many strikes have been held in the various sectors of the economy, including general and solidarity strikes. The Government is making every endeavour to ensure that the preliminary draft text of the new Act can be submitted to Parliament in the next session, after consultation with the social partners.

The Committee expresses the firm hope that all its comments have been taken into account in the drafting of the preliminary draft text of the new General Labour Act and once again hopes that the adoption of the new Act, which has been announced on so many occasions, will take place in the near future.

The Committee requests the Government to supply information in its next report on any positive development in this respect and trusts that it will finally be able to note that the new legislation has been brought into conformity with the principles and provisions of the Convention.

The Committee is also addressing a request directly to the Government.

Burkina Faso (ratification: 1960)

With reference to its previous comments on the need to repeal the provisions requiring public servants to respect the revolutionary order under penalty of disciplinary sanctions laid down in Zatu No. An-VI-008-FP/TRAV establishing the general conditions of service of the public service (sections 6, 7, 9, 36 and 46), the Committee notes with interest that the Government indicates in its report that it will take account of the Committee's comments in the planned review of the general conditions of service of the public service.

The Committee asks the Government in its next report to provide copies of the texts that repeal the above provisions so as to bring the legislation fully into conformity with the requirements of the Convention in this respect.

Canada (ratification: 1972)

Articles 2 and 3 of the Convention: The right of workers and employers to establish and join organizations of their own choosing without previous authorization: the right to formulate their programmes.

1. Following the September 1985 study and information mission, the Committee, along with the Committee on Freedom of Association (see 241st Report, Cases Nos. 1234, 1247 and 1260), has continued to raise various issues of concern and has requested the governments of the Provinces of Newfoundland and Ontario to take the necessary measures to give full effect to the Convention.

Alberta

As regards the Province of Alberta, the Committee had requested the Government for a considerable number of years: (a) to repeal the provisions of the *University Act* which empowered the Board of Governors to designate the sole academic staff members who were allowed, by law, to establish and join a professional association for the defence of their interests, and (b) to introduce an independent system of designation where the parties could not reach agreement for the purpose of joining academic staff associations. The Committee notes the Government's comments that the action concerning the legality, under the Canadian Charter of Rights and Freedoms of a similar section of the *College Act*, has not yet been heard by the court and that the Government undertook a public policy development process concerning advanced education in the province that was completed in October 1994 and where input from the faculty associations on desirable amendments were welcomed. The Committee takes note of the Government's comment that the possibility of legislative amendments is being considered.

As regards the *Public Service Employee Relations Act* and the Labour Relations Act, the Committee recalls that the provisions of these Acts prohibiting the right to strike of a broad range of provincial public servants go beyond acceptable limits on the right to strike recognized as derived from Article 3 of the Convention. The Committee takes note of the Government's comment that the review of these laws is continuing and that several sections of the *Public Service Employee Relations Act* have been updated.

Newfoundland

With regard to the Province of Newfoundland, the Committee refers to its previous comments regarding the necessity to amend the *Public Service (Collective Bargaining) Act (No. 59)* which by its definition of "employees" excludes many employees from belonging to the union of their choice and also restricts the right to strike in the public service, since section 10.1 of the Act which relates to the procedure for the designation of "essential employees" confers large powers on the employer in this respect. The Committee notes from the Government's report that consultation on a broad range of labour relations legislation and policy issues is still in process.

The Committee would first like to recall that the *University Act* of Alberta as well as the *Public Service (Collective Bargaining) Act (No. 59)* of Newfoundland restrict the right of workers to establish and join organizations of their own choosing and stresses the need to amend these pieces of legislation in order to bring them into full conformity with *Article 2 of the Convention*. The Committee urges the Government to provide information on any measures taken in this respect.

As regards the limitation on the right to strike in the *Public Service Employee Relations Act* and the Labour Relations Act of Ontario as well as in the *Public Service (Collective Bargaining) Act (No. 59)* of Newfoundland, the Committee further recalls that it has always been of the opinion that prohibition on the right to strike should be confined to public servants exercising authority in the name of the State, or to essential services in the strict sense of the term. The Committee emphasizes once again that limitations on strike action in the public service or essential services should be compensated by adequate, impartial and speedy conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards should, in all cases, be binding on both parties. In the specific case of the *Public Service (Collective Bargaining) Act (No. 59)* of Newfoundland, the Committee reiterates its request to the Government to ensure that the government of this province reviews the provisions of this legislation concerning the designation of essential employees in order to facilitate access to independent arbitration in the event of dispute or to establish a negotiated minimum service in other services which are of public utility.

2. The Committee notes with concern from the conclusions of the cases examined by the Committee on Freedom of Association as well as from the last reports of the Government that, both at federal and provincial levels, legislation prohibiting strikes in various sectors that are not essential, such as agriculture, horticulture, ports, construction and education has been adopted. The Committee would ask the Government to ensure that restrictions on the right to strike are limited to essential services in the strict sense of the term, to public servants exercising authority in the name of the State or in cases of acute national crisis so as to be in compliance with the freedom of association principles.

The Committee is also addressing a direct request to the Government.

Central African Republic (ratification: 1960)

The Committee notes that the Government's report has not been received.

The Committee once again requests the Government to keep it informed on the progress made in the procedure for the reimbursement of the property of the former General Union of Central African Workers (UGTC), which has become the Trade Union Federation of Central African Workers (USTC).

Furthermore, the Committee recalls that sections 1, 2 and 4 of Act No. 88/009 of 19 May 1988 (the requirement that a person who stands for trade union office has to be an employee in the same occupation, and the establishment of the single trade union system in the legislation) are not fully in accordance with the requirements of the Convention.

The Committee has been informed that receipts for registration as associations have been given to certain trade union organizations outside the trade union organization referred to in the law, and particularly to the Organization of Free Trade Unions in the Public Sector (OSLP) under Act No. 61.233 of 27 May 1961 respecting associations. The Committee notes that this Act does not provide for sufficient guarantees in the light of the Convention. Furthermore the Committee notes that section 14 of this Act explicitly provides that it does not apply to occupational trade unions. Furthermore, the Committee notes that the National Confederation of Central African Workers (CNTC) states that it received no response to its request for information, dated 22 May 1994, to the Government on the situation of the 13 trade union organizations which are affiliated to it and which, according to the CNTC, registered their statutes two years ago, but which have still not obtained a receipt of the registration of their statutes.

The Committee therefore requests the Government to reconsider its position on the amendment of the relevant sections of the Labour Code in order to ensure in law and in practice that all workers, without distinction whatsoever, have the right to establish trade unions of their own choosing outside the single trade union organization referred to by the law. It also requests it to make the excessive restrictions on the requirement of employment in the same occupation to stand for trade union office more flexible, in order to ensure that first level organizations can join the federations and confederations of their own choosing and that qualified persons, such as person employed by trade unions or retired persons, can exercise trade union office.

The Committee once again hopes that the Government will bring its legislation into full conformity with the Convention in the near future.

Chad (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in its report and the conclusions of the Committee on Freedom of Association in Case No. 1592 which drew the Government's attention to the need to ensure that workers are entitled to form organizations of their own choosing without prior authorization and without being subject to a background investigation, in accordance with the requirements of the Convention.
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> In its previous comments, the Committee asked the Government to repeal specifically:
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> - Ordinance No. 30 of 26 November 1975 suspending all strike action throughout the country;
> - Ordinance No. 001 of 8 January 1976 prohibiting public and similar employees from exercising the right to organize; and
> - section 36(2) of the Labour Code prohibiting all political activity by trade unions.
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> The Government indicates in its report that the provisions in question have been repealed by section 29 of the National Charter of March 1991 and by section 10 of Ordinance No. 015/PR/1986 issuing the general conditions of service of the public service which grants public servants the right to strike within the provisions of the law. The Government none the less assures the Committee that it has submitted to the competent authority two draft ordinances to repeal the Ordinances of November 1975 and January 1976, but does not provide a copy of them. It also indicates that the draft Labour Code which was being prepared has not yet been adopted.
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> The Committee notes with regret that the Government has not yet adopted the amendments which it requested, and again urges the Government to provide with its next report the texts repealing the two above-mentioned Ordinances and the text of section 36 of the Labour Code.

Furthermore, the Committee considers, as does the Committee on Freedom of Association, that it is necessary to amend or repeal the provisions of Ordinance No. 27 INT/SUR of 28 July 1962 regulating associations which the Government relied on in the case of the complainant trade union in Case No. 1592. This Ordinance requires prior authorization to be obtained from the Ministry of the Interior in order to form an association subject to a prison sentence of from one month to one year (sections 5 and 6), allows the immediate administrative dissolution of an association (section 8) and empowers the administrative authorities to oversee the funds of associations (section 11).

The Committee asks the Government to indicate in its next report the measures that have been taken to ensure that these provisions, which are contrary to the requirements of the Convention, are not applicable to trade unions.

The Committee is also addressing a direct request to the Government concerning other matters.

Colombia (ratification: 1976)

The Committee notes the Government's report, the information given by a government representative at the Conference Committee in 1993 and the subsequent discussions. The Committee recalls that its previous comments concerned:

- the ban on more than one trade union in an enterprise, institution or establishment (section 357 of the Labour Code) and the refusal to register a second union in an enterprise (section 366(4)(c) of the Labour Code amended by section 46 of Act No. 50), and the requirement that, in order for a trade union to be registered, the labour inspector must certify that there is no other union (section 365(g) of the Code);
- the requirement that, in order to form a union, two-thirds of its members must be Colombian (section 384 of the Code);
- the supervision of the internal management and meetings of unions by public servants (section 486 of the Code);
- the presence of the authorities at general assemblies convened to vote on referral to arbitration, or on the calling of a strike (new section 444, last subsection, of the Code);
- the requirements for eligibility for trade union office (sections 388(1)(a) and (c), 422(1)(a) and (c) and 432(2) of the Code): a person must be Colombian, belong to the trade or occupation and have exercised it for more than six months; and the requirement in sections 388(1)(g) and 422(1)(g)) that a person must not have been condemned to a serious penalty, unless he has been rehabilitated, nor sued for ordinary offences at the time of election (this applies to trade union leaders only);
- the suspension, for up to three years, with loss of trade union rights, of trade union officers who have been responsible for the dissolution of their unions (new section 380(3) of the Code);
- the prohibition on federations and confederations from calling a strike (section 417(1) of the Code);
- the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very wide range of public services which are not necessarily essential (new section 450(1)(a) of the Code and Decrees Nos. 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, 57 and 534 of 1967);
- the power of the Minister of Labour to refer a dispute to arbitration when a strike lasts for 60 calendar days (section 448(4) of the Code);

- the possibility of dismissing trade union officers who have intervened or participated in an unlawful strike (new section 450(2) of the Code).

The Committee notes with interest that, according to the Government, once the Standing Tripartite Committee on Labour has been established, the amendment of the following provisions will be submitted to it for consideration:

- the requirement that, to form a trade union, two-thirds of the members must be Colombian (section 384 of the Code); and
- the requirement that persons must belong to the trade or occupation in order to be eligible for trade union office (sections 388(1)(c) and 432(2) of the Code and section 422(1)(c) of the Code, for federations).

With regard to the authorities' attendance at trade union assemblies (section 444, last subsection of the Code), the Committee also notes that Decree No. 2519 of 14 December 1994, which regulates sections 444, 445 and 448 of the Code limits such attendance exclusively to observing voting on referral to arbitration, and the calling or continuation of a strike. In this respect, the Committee recalls that the freedom of assembly constitutes a fundamental aspect of trade union rights and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 35). Therefore, the Committee requests the Government to repeal the provisions which allow the authorities' attendance at trade union assemblies during votes on strike action.

However, as regards the refusal to register a second trade union in an enterprise, the Committee regrets to note the Government's observation that where a trade union exists in an enterprise, another union of the same kind may not be registered, since this would contribute to weakening the trade union movement.

In this connection the Committee reminds the Government that under *Article 2 of the Convention* workers have the right to form and join trade unions of their own choosing, and draws its attention to the principle that it is not the purpose of the Convention to make trade union diversity an obligation, but to make this diversity possible in all cases. There is a fundamental difference between on the one hand a trade union monopoly established or maintained by law, and on the other hand, voluntary groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, coordinate their efforts to tackle ad hoc difficulties which affect all their organizations, etc. Trade union unity imposed by law runs counter to the standards expressly laid in the Convention (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 91). The Committee asks the Government to take appropriate steps to ensure that sections 357, 365(g) and 366(4)(c) are amended to take account of these comments.

The Committee again expresses the hope that the Standing Tripartite Committee provided for in the National Constitution will be set up in the near future, and asks the Government to ensure that the amendments made to labour legislation by the above Committee takes account of all the comments that the Committee of Experts has been making for many years. The Committee asks the Government to report on any positive developments in this area.

Costa Rica (ratification: 1960)

The Committee notes that the Government's report was received when its work had already begun. It observes that the report does not contain any specific information to the questions raised. In these circumstances, the Committee can only repeat its previous observation which read as follows:

> The Committee notes with interest two Bills which give effect to requests it had made for trade union organizations, and not just solidarist organizations, to be able to administer compensation funds for dismissed workers (the Bill respecting the occupational capitalization and economic democratization fund), under which the concept of public services for which strikes are prohibited is limited to essential services in the strict sense of the term, namely those the interruption of which could endanger the life, safety or health of the whole or part of the population (the Bill on the statutory system of public employment and civil service). The Committee recalls the importance of repealing subsections (a) and (b) of section 369 of the Labour Code, which excessively restricts strikes in the public, agricultural and forestry sectors.
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> Finally, with regard to the prohibition on foreigners from holding office or exercising authority in trade unions (section 60(2) of the Constitution), the Committee notes that the Government has established a committee in the Ministry of Labour to undertake an exhaustive analysis of this matter and has formally requested the technical assistance of the Office with a view to assisting and guiding the process of modifying the Constitution and finding a solution which is in accordance with ILO principles.
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> The Committee welcomes the considerable progress which has been made as regards the application of the Convention and requests the Government to keep it informed of developments relating to the two above Bills (for which technical assistance has been received from the Office) and the question of the possibility of foreigners being able to hold trade union office.

Côte d'Ivoire (ratification: 1960)

The Committee notes the Government's report and the recommendations of the Committee on Freedom of Association in Cases Nos. 1594 and 1647 (296th report of the Committee approved by the Governing Body at its session of November 1994). The Committee also takes note of the content of the draft Labour Code which is being prepared and which was supplied during the direct contacts that took place in Côte d'Ivoire when Case No. 1594 was being examined.

1. With reference to its previous comments, the Committee notes with interest section 82.11 of the draft Labour Code which limits the powers of the President of the Republic to refer a collective dispute to compulsory arbitration to cases where a strike may be ended or prohibited in accordance with the principles of freedom of association, since it provides for such a possibility only in the following circumstances;

(a) if the strike affects an essential service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population;

(b) in the event of an acute national crisis.

2. The Committee also notes with interest the provisions in the draft Code concerning the representativeness of workers' and employers' organizations (section 56(1), (2) and (3)) which set out objective, precise and predetermined criteria directly linked to election results, in accordance with the principles of freedom of association.

3. Lastly, in order to clear up any ambiguity, the Committee like the Committee on Freedom of Association, requests the Government to amend Act No. 60-315 of 20 September 1960 on Associations, so as to provide that it does not apply to trade unions. The Committee hopes that provisions taking account of its comments will be adopted in the near future, and asks the Government to inform it of any development in this respect in its next report.

Croatia (ratification: 1991)

The Committee notes the information supplied by the Government in its reports. It also notes the observations of the Union of Autonomous Trade Unions of Croatia and the Government's comments on thereon.

The Committee observes that the above organization's comments refer to certain provisions of the law prohibiting or restricting the exercise of the right to strike in various sectors: the Defense Act prohibits strikes by military personnel and persons directly connected with combat preparations; the Internal Affairs Act prohibits strikes by workers in internal affairs if the strike would prevent the performance of the activities of the Internal Affairs Department; and the Electric Power Industry Act, the Croatian Railways Act, the Forests Act, the Roads Act and the Foundation of Public Croatian Postal and Telecommunications Company Act, provide for a minimum service in the event of a strike.

In this connection the Committee notes the Government's statement that by means of special laws the right to strike in the military forces, the police and certain public services has been restricted to an extent compatible with the continuation of activities needed for the maintenance of production and activities which are essential in order to prevent any danger to the life, health and safety of the population. The Government also refers to the state of danger of immediate war prevailing in the country as a reason for restricting exercise of the right to strike in certain sectors connected with preparations for combat.

The Committee notes that the ban on the exercise of the right to strike concerns only members of the armed forces and is not therefore inconsistent with the Convention. The Committee also observes that, as regards the other sectors, the legislation does not prohibit the exercise of the right to strike but provides for acceptable restrictions (minimum service) which are compatible with the application of the Convention.

The Committee also observes that the comments of the Union of Autonomous Trade Unions of Croatia also refer to a Bill to regulate the right to strike in public services and companies. The Committee examines these comments, together with other matters relating to the application of the Convention, in a direct request addressed to the Government.

Cuba (ratification: 1952)

The Committee notes the Government's report, the discussions in the Conference Committee in 1993 and the decision of the Committee on Freedom of Association in Case No. 1628 (292nd Report, paragraph 21 (March 1994)).

The Committee recalls that its previous comments referred to:

— the need to remove the reference to the Central Organization of Workers from the Labour Code and other legal texts; and

— interference by the Cuban Communist Party in the election of trade union leaders.

With regard to the need to remove the reference to the Central Organization of Workers from the Labour Code and other legal texts, the Committee notes the Government's statement in its report that in view of the amendments to the Constitution, and by virtue of Legislative Decree No. 147 of 1994, it will be necessary to revise and adapt the labour legislation to the new social and economic conditions.

The Committee emphasizes that the Constitutional amendments have significant consequences for the rest of the labour legislation and it therefore hopes that in the near future the Labour Code and other legal texts will be brought into conformity with the

Constitutional amendments and that the reference to the Central Organization of Workers will be removed.

With regard to the relations between the Central Organization of Workers of Cuba (CTC) and the Communist Party, and the alleged interference by the Cuban Communist Party in the election of trade union leaders, the Committee takes due note of the comments made by a Worker member of Cuba to the Conference Committee to the effect that the relations between the CTC and the Cuban Communist Party did not compromise the continuity of the trade union movement, since the members of the CTC approved its statutes, rules and guidelines and elected its leaders in an open and democratic manner, and no candidates had been proposed by the Communist Party. The Worker member also indicated that the relationship between the CTC and the Communist Party was approved by the workers democratically and that they were the only ones who were competent to decide whether or not to change it.

Nevertheless, the Committee emphasizes that a system in which there is a single party and a single central trade union organization is likely to lead in practice to external interference prejudicial to trade union independence.

The Committee requests the Government to guarantee in law and in practice the right of all workers and employers, without distinction whatsoever, to establish independent organizations of their own choosing, outside any existing trade union structure if they so desire (*Article 2 of the Convention*), and the right to elect their representatives in full freedom (*Article 3 of the Convention*).

The Committee once again requests the Government to keep it informed of any progress in these matters.

Cyprus (ratification: 1966)

Restrictions on the right to strike. With reference to its previous comments on the need to amend sections 79A and 79B of the Defence Regulations, which allow the Council of Ministers to ban strikes in certain services which it considers essential, the Committee notes that the Government's latest report contains no information on any further developments following the tripartite meeting of October 1992, held under the chairmanship of the Minister of Labour and Social Insurance, at which the Ministry of Finance was also present, and which was to examine this matter.

The Committee recalls that the notion of essential services in the context of international labour Conventions covers solely those services the interruption of which would endanger the life, safety or health of the whole or part of the population. It trusts that new provisions that are in keeping with these principles will be adopted in the near future and again asks the Government to inform it of any new developments in this respect in its next report, and particularly to provide the text of any new provisions as soon as they have been adopted.

Denmark (ratification: 1951)

The Committee notes the information supplied by the Government in its report.

The Committee recalls that it had considered section 10 of Act No. 408 of 1988, which established the Danish International Ships' Register (DIS), to be contrary to *Articles 2, 3 and 10 of the Convention*, since it prevented workers who were employed on board Danish ships but who were not residents of Denmark, from being represented in collective bargaining by organizations of their own choosing. The Government stresses that it has called for a discussion at the international level on issues relating to international ships' registers.

While noting the Government's statement in this regard, the Committee nevertheless would request the Government to take steps to ensure that its legislation is amended so that non-resident workers who are employed aboard Danish ships are free to be represented in collective bargaining by organizations of their own choosing. The Committee requests the Government to keep it informed of any progress made in this respect.

Dominican Republic (ratification: 1956)

The Committee notes the Government's report and the conclusions of the Committee on Freedom of Association concerning Case No. 1751 (295th Report, paragraph 373, approved by the Governing Body at its 261st Session, November 1994).

The Committee recalls that its previous comments referred to:

- the disbanding of associations of public employees by the Executive (section 13 of Act No. 520 of 1920);
- the requirement that federations must obtain a two-thirds majority vote in order to form confederations (section 383 of the Labour Code); and
- the refusal of certain enterprises in free trade zones to form unions, and the disregard of trade union privileges.

With regard to the disbanding of associations of public employees by the Executive (section 13 of Act No. 520 of 1920), the Committee notes with satisfaction that the implementing Regulations of the Civil Service and Administrative Careers Act (of 29 March 1994) provides expressly, in section 142, paragraph VII, that the registration of organizations of public servants may only be quashed by a ruling of the Higher Administrative Tribunal when they engage in activities which are unrelated to their legal purposes.

With regard to the refusal of certain enterprises in the free trade areas to form trade unions, and the disregard of trade union privileges, the Committee notes with interest the information supplied by the Government to the effect that between the entry into force of the new Labour Code (17 June 1992) and the date of drafting the present report (11 October 1994) there have been no rejections of applications to register trade unions in the export-processing areas, and during the same period 75 unions and three federations have been registered. The Committee also notes with interest that, owing to the Ministry of Labour's supervision of compliance with trade union rights, there have been penal actions against 54 enterprises, 14 of which have been sentenced.

The Committee none the less observes that the Government has not replied to its comments on the requirement that federations must obtain a two-thirds majority vote in order to form confederations (section 383 of the Labour Code). The Committee stresses that such a requirement is excessive and therefore contrary to Article 5 of the Convention and the principles of freedom of association. It therefore again asks the Government in its next report to state the measures adopted to enable confederations to be formed without impediment, by eliminating excessive restrictions.

With regard to the impugning before the courts of the registration of the *Sindicato Unitario Agrícola y Fabril del Ingenio Cristóbal Colón* (Case No. 1751), the Committee notes the conclusions of the Committee on Freedom of Association to the effect that all workers of the *Ingenio Cristóbal Colón* should be able to form and join the union of their choice and that, consequently, the *Sindicato Unitario Agrícola y Fabril del Ingenio Cristóbal Colón* should be able to operate and carry out its activities (see 295th Report, paragraph 372). The Committee, like the Committee on Freedom of Association, asks the Government to take the necessary measures, including through any appropriate legal action, to guarantee the right to organize of the workers of the *Ingenio Cristóbal Colón*, and to keep it informed of developments.

Ecuador (ratification: 1967)

The Committee notes the Government's report and the discussions that took place at the Conference Committee in 1993, and recalls that its previous comments concerned:

- the ban on public servants' forming unions (section 10(g) of the Civil Service and Administrative Careers Act of 8 December 1971);
- the increase from 15 to 30 of the minimum number of workers required for the establishment of trade union associations, including works councils (sections 53 and 55 of the Labour Code, new sections);
- the penalties of imprisonment for instigators of and participants in collective work stoppages (Decree No. 105, 7 June 1967);
- the requirement that members of the executive committees of works councils be Ecuadorian (section 455 of the Labour Code);
- the dissolution by administrative decision of a works council when its membership drops below 25 per cent of the total number of workers (section 461 of the Code);
- the prohibition placed on unions from taking part in religious or political activities and the requirement that this must be established in union statutes (section 443(11) of the Code).

With regard to the draft reforms of the legislation to which the Government committed itself, the Committee regrets to note that they have still not been submitted to the National Congress. The Ministry of Labour has therefore contacted the President of the National Congress, through various channels, asking that the procedure be expedited as a matter of urgency.

The Committee expresses the firm hope that account was taken, in the drafting of the above-mentioned reforms, of the proposals made during the 1985 direct contacts mission and of the Committee's other comments. It expresses the hope yet again that the reforms will be adopted in the near future.

The Committee asks the Government in its next report to provide information on any positive developments in this matter and trusts that it will be able to note that the new legislation is in keeping with the principles and provisions of the Convention.

The Committee is also addressing a request directly to the Government.

Egypt (ratification: 1957)

The Committee notes the information supplied by the Government in its report.

Articles 2 and 3 of the Convention. The Committee refers to its previous comments on the need to repeal or amend the provisions of Act No. 35 of 1976 on trade unions as amended by Act No. 1 of 1981, which Act institutionalizes a single trade union system (sections 7, 13, 14, 16, 17, 41, 52 and 65) and establishes that the Confederation of Egyptian Trade Unions controls the nomination and election procedures for trade union office and the financial management of trade unions (sections 41 and 62), contrary to Articles 2 and 3 of the Convention. The Committee notes the information supplied by the Government in its report to the effect that the Act in question is in the process of being revised by the parties having a direct interest, i.e. the trade unions, without interference by the Government. The Government adds that the committee in charge of preparing amendments has been informed of the Committee's observations. The Committee expresses the firm hope that the planned amendments will establish the right of all workers and all employers to form, should they so wish, industrial organizations outside the existing trade union structure, and the right of workers' organizations to elect their representatives in full freedom and to handle their financial activities without interference from the public authorities.

Articles 3 and 10. The Committee recalls that its previous comments referred to the need to repeal or amend sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 6 August 1981 on compulsory arbitration at the request of one party outside services which are essential in the strict sense of the term, and section 70(b) of Act No. 35 of 1976 on the Public Prosecutor's authority to ask the criminal courts to remove from office the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service. The Committee hopes that any restrictions or prohibitions on the right to strike contained in the legislation will be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is services whose interruption would endanger the life, personal safety or health of the whole or part of the population (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraphs 158 and 159).

The Committee asks the Government to indicate in its next report the measures taken to bring all the legislation into conformity with the requirements of the Convention.

Finland (ratification: 1950)

The Committee notes the information provided by the Government in its report as well as the observations of the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA).

With reference to its previous comments relating to the right of unions to elect their representatives in full freedom, the Committee notes with satisfaction that amendments to sections 44 and 48 of the Act on Personnel Funds and section 6 of the Act on Personnel Representation in the Administration of Undertakings, which remove restrictions on nationality and domicile, have entered into force. The Committee further notes from the Government's report that section 10, paragraph 3, of the Associations Act, which included a provision on the maximum number of foreigners who could be members of associations, has been repealed and that by virtue of an amendment to section 11 of the same Act, members' nationalities no longer need to be registered in the association's memberships list.

Moreover, the Committee notes the Government's introduction of a Bill to revise the fundamental rights of citizens. According to the Government, the new provisions will secure, besides other rights, freedom of association and for the first time, trade union rights expressly (subsection 10(a)(2)). These provisions will also apply to all those within the jurisdiction of Finland, and not only to Finnish citizens.

The Committee would request the Government to keep it informed of developments regarding the above-mentioned Bill. It also requests it to send its observations on the comments made by the SAK and the AKAVA in its next report.

Gabon (ratification: 1960)

The Committee notes that the Government's report has not been received, but it has noted the communication from the Confederation of Free Trade Unions of Gabon concerning the application of the Convention. The Committee recalls that the divergencies between the national legislation and the Convention concern the following points:

- the need, in order to lift legislative restrictions on the possibility of trade union pluralism, to repeal or amend section 174 of the Labour Code, which obliges all workers' or employers' organizations to affiliate with the Trade Union Confederation of Gabon (COSYGA) or the Employers' Confederation of Gabon (CPG), and section 173 of the Labour Code, which prohibits the establishment of more than one union in a given occupation or region, and the need to amend Act No. 13/80 of 12 June 1980 establishing a trade union solidarity tax deducted for COSYGA;
- the need to amend sections 239, 240, 245 and 249 on compulsory arbitration, which impose excessive restrictions on the right to strike of workers' organizations in defense of economic, social and professional interests, since restrictions, or even prohibitions, should only be imposed in respect of public servants acting in their capacity as agents of the public authority or in essential services in the strict sense of the term, that is services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population, or in the event of acute national crisis.

In this connection, the Committee again asks the Government to inform it in its next report of the measures taken to lift all the legislative restrictions on the possibility of trade union pluralism and to limit restrictions on the right to strike in accordance with the principles of freedom of association. It reminds the Government that the International Labour Office is at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention.

The Committee also notes the communication of 6 October 1994 from the Confederation of Free Trade Unions of Gabon (CGSL). The CGSL expresses concern at the delay in the promulgation of the new Labour Code, which the Government announced long ago, and complains that for the last two years the Employers' Confederation of Gabon (CPG) has forbidden, by circular, the collectors of free trade unions to deduct their members' dues from wages despite the formal written consent of the workers concerned. The CGSL also states that it wants machinery to be established with the technical assistance of the Office, particularly in collective agreements, for the payment of trade union dues, and seeks the repeal of Act No. 13-80 of 12 June 1980 of 12 June 1980 on the trade union solidarity tax deducted for COSYGA.

The Committee recalls that the deduction and transfer to unions of trade union dues is a matter that should be dealt with in free negotiations between the parties concerned in observance of the principles of the freedom of association, and requests the Government to ensure that employers and their organizations, particularly the CPG, apply this principle, and to keep it informed of any developments in this respect.

Germany (ratification: 1957)

The Committee notes the information contained in the Government's report and the comments dated 8 February 1994 made by the German Confederation of Trade Unions (DGB). It also notes the statements by the Government representative to the Conference Committee in June 1994 and the ensuing discussion.

1. *Access to the workplace for trade union officials who do not belong to the enterprise*

The Government, referring to its previous comments and reports, assures that it fully complies with the requirements of the Convention in this respect. On the question of guaranteeing trade union officials, and even those who do not belong to an enterprise, access to the workplace if they consider it necessary, the Government explains in detail that the Federal Labour Court, in a ruling handed down on 25 March 1992, has ruled that a trade union is represented in an enterprise if at least one worker in the enterprise is a member of the union and that a simple statement, certified by a notary, which does not mention the name of the member of the trade union, is sufficient to establish that the trade union is represented in the enterprise.

In the opinion of the DGB, the matter of the right of access of trade union representatives who do not belong to the enterprise has not been settled. The DGB states that this right is often contested in practice, for example in the postal services (POSTDIENST). In this respect, the Government stated previously that 92 per cent of postal workers are members of three trade unions, which are already represented in these services.

The Committee notes with interest the ruling by the Federal Labour Court dated 25 March 1992 and notes that as a result a trade union is represented in an enterprise, without any restriction, when a single worker is a member of the union, the name of the worker not having to be divulged. The Committee considers, in the light of the available information, and particularly the recent decision by the Federal Labour Court previously referred to, that the provisions of the Convention no longer appear to be in contradiction with the Convention and hopes that measures will be taken to ensure that the practice followed is in accordance with the requirements of the Convention.

2. *Requisitioning of postal service employees (Beamte) to replace striking state employees and manual workers (Angestelle) in the postal services*

The Committee notes with satisfaction the Government's statement in its report that it has drawn its conclusions from ruling No. 88.103 of the Federal Constitutional Court, handed down on 2 March 1993, and that while there is no law to justify its intervention, no federal employee will be requisitioned in future to replace workers who are participating in a legal strike. The Committee also notes the assurances given by the Government that other employers, and particularly the States (Länder) and the municipal authorities, will also take this decision into account.

3. *Denial of the right to strike in the public service*

The Committee notes the information supplied by the Government to the effect that the question of restricting the right to strike of employees of the railways and postal services is unlikely to remain an issue in practice, since privatization is envisaged. However, the employees affected will continue to enjoy their status as public employees in the privatized enterprises. In this context, the question arises of reducing the number of public employees to include only public servants exercising authority in the name of the State.

The Committee once again states that although it has always admitted that the right to strike may be restricted or prohibited in the public service, such a prohibition would become meaningless if the legislation defined the public service too broadly. Although the Committee cannot overlook the special characteristics and legal and social traditions of each country, it must, however, endeavour to establish fairly uniform criteria in order to examine the compatibility of legislation with the provisions of the Convention. In these conditions, the prohibition of the right to strike should not be imposed on public servants who do not exercise authority in the name of the State (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 158).

The Committee therefore requests the Government to take the necessary measures to ensure that public servants who do not exercise authority in the name of the State and their organizations are not denied the right to organize their activities and formulate their programmes in defence of their economic, social and occupational interests by means which include strikes, if they so wish, in accordance with the principles set out in *Articles 3 and 10 of the Convention*. The Committee requests the Government to indicate any measure taken in this respect in its next report.

Ghana (ratification: 1967)

The Committee notes the Government's reports as well as the two memoranda submitted by the National Advisory Committee on Labour (NACL) to the Minister for Employment and Social Welfare concerning amendments to the Industrial Relations Act of 1965 and the Trade Unions Ordinance of 1941.

The Committee recalls that its previous comments concerned the following points:

- the extensive powers of the Registrar to oppose the registration of a trade union (sections 11(3) and 12(1) of the Trade Unions Ordinance, 1941), contrary to *Article 2 of the Convention*;
- the wide powers of the Registrar to refuse to recognize a trade union as a representative in collective negotiations (section 3(4) of the Industrial Relations Act, No. 299 of 1965), contrary to *Article 3*;
- the absence of provisions on the right to form and join federations and confederations and the right to join international organizations of workers and employers, contrary to *Article 5*.

The Committee notes with interest that the NACL, in its memorandum of 8 September 1993, recommends that sections 11(3) and 12(1)(d) of the Trade Unions Ordinance be amended and repealed, respectively, so that the Registrar no longer has extensive powers to oppose the registration of a trade union.

It further notes that the NACL, in its memorandum of 29 July 1993, recommends that section 3(4) of the Industrial Relations Act be amended so as to enable the Registrar to issue collective bargaining certificates to unions and other workers' organizations with two-thirds majority membership of organizations nationwide. Nevertheless, the Committee considers that this amendment would not be sufficient to ensure the full respect of the right of unions to organize their activities as provided for in *Article 3 of the Convention*.

The Committee observes that neither of these two memoranda contain recommendations in respect of provisions on the right to form and join federations and confederations and the right to join international organizations of workers and employers. It notes, however, from the Government's report that the Ghana Trades Union Congress (TUC) and its 17 national unions are affiliated to the International Confederation of Free Trade Unions (ICFTU) and the Organization of African Trade Union Unity (OATUU). Furthermore, each of the 17 national unions is affiliated to the trade secretariats of international trade union organizations. On the employers' side, the Ghana Employers' Association is affiliated to the International Organization of Employers and the Pan-African Confederation. Finally, the Government mentions that a new trade union federation — the Textile, Garment and Leather Employees' Union Ghana (TGLEU) — was recently registered and is not affiliated to the Trades Union Congress. Currently, seven collective bargaining certificates have been issued to affiliates of the TGLEU.

The Committee would request the Government to keep it informed of any developments concerning the adoption of these memoranda and consequently, the enactment of the proposed amended provisions of its national legislation.

Greece (ratification: 1962)

The Committee notes the information supplied by the Government in its report.

It recalls that its previous comments related to the following points:

- the determination of the minimum service to be provided in the event of a strike in the public services;
- the risk of financial interference by the State in trade union affairs; and
- the question of the freedom of association of seafarers.

The Committee takes due note of the amendments made by Act No. 2224 of 1994. Section 2 of the Act empowers the social partners to negotiate an agreement on the designation of security staff and the staff required to cope with the essential needs of the life of the community in the event of a strike as of 1 October 1994. If an agreement is not concluded, the matter is referred to mediation and, in the event of the failure of mediation, each of the parties may bring the matter before a tripartite body presided over by a judge. Section 3 provides for the holding of a public debate between employers and workers in the event of strikes in the public services. The Government states that the new Act is intended to permit the social partners to participate in the designation of the necessary personnel and in the supervision of matters relating to the security staff to be maintained through the conclusion of collective agreements.

The Committee also notes that Acts Nos. 2091 of 1992 and 2224 of 1994 amend Act No. 1915 of 1990 which, according to the General Confederation of Greek Workers, under the pretext of the financial independence of trade union organizations, had deprived second- and third-level organizations of the financial contributions of workers. The new Act permits the allocation of workers' contributions to the above organizations, to the National Confederation of Persons with Specific Needs, and to first-level organizations representing over 500 workers, and also allows subsidies to be given to certain organizations of retired persons.

The Committee recalls the importance that it attaches to legal provisions governing the finances of trade union organizations not being of such a nature that they afford the public authorities a discretionary power over the finances of trade unions.

Finally, the Committee strongly regrets that the Government confines itself to stating that the trade union status of seafarers has to be the subject of a broad consensus between the parties concerned, without providing other information. The Committee recalls that it has noted with concern for very many years that seafarers are excluded from Acts Nos. 1264 of 1982 and 1915 of 1990 respecting trade unions. It urges the Government to adopt legislation that is in conformity with the Convention in order to recognize for these workers the rights that are guaranteed in the Convention. The Committee requests the Government to indicate in its next report any positive development that has occurred in this respect.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Guatemala (ratification: 1952)

The Committee notes the information supplied by the Government representative at the Conference Committee in 1993 and the discussions held in the same Committee.

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which addressed the following issues:

> The Committee regrets to note that the amendments to sections 223(b) and 241(c) of the Labour Code do not take account of the Committee's comments and that sections 211(a) and (b), 222(f) and (m), 243(a) and 249, 255 and 257 of the Code have not yet been amended.
>
> The Committee wishes to recall the following provisions of the legislation which are still at variance with the Convention:
>
> - the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Code);
> - the requirement of Guatemalan nationality in order to form trade unions or to be eligible for trade union office (new paragraph "d" of section 220 and section 223(b));
> - the requirement of a majority of two-thirds of the workers in the enterprise or production centre (section 241(c)) and of the members of a trade union (section 222(f) and (m)) for the calling of a strike;
> - the prohibition of strikes or work stoppages by agricultural workers at harvest time, with a few exceptions (sections 243(a) and 249);
> - the prohibition of strikes or work stoppages by workers in enterprises or services in which the Government considers that a suspension of their work would seriously affect the national economy (sections 243(d) and 249);
> - the possibility of calling upon the national police to ensure the continuation of work in the event of an unlawful strike (section 255);
> - the detention and trial of persons in breach of the provisions of Title VII of the Code (section 257);
> - the sentence of one to five years' imprisonment for persons who carry out acts intended not only to cause sabotage and destruction (which do not come within the scope of the protection provided by the Convention), but also to paralyse or disturb the functioning of enterprises contributing to the development of the national economy, with a view to jeopardizing national production (section 390(2) of the Penal Code).
>
> Furthermore, the Committee observes that new paragraph "d" of section 220 of the Code requires a sworn statement from members of the interim executive committee of a trade union to the effect that, amongst other things, they have no criminal record and are active workers in the enterprise or on their own account; in addition, section 223(b) establishes, amongst other requirements for membership of the executive committee, that candidates must be active workers at the time of election and that at least three of them must know how to read and write.
>
> With regard to the requirement that members must have no criminal record, the Committee considers that a conviction on account of activities the nature of which is not such as to call into question the integrity of the person concerned, and is not such as to be prejudicial to the exercise of trade union functions, should not constitute grounds for disqualification from trade union office and that legislation providing for disqualification on the basis of any offence is incompatible with the principles of freedom of association (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 120).
>
> With regard to the requirement that members must be active workers in the enterprise, in the opinion of the Committee, provisions of this type may prevent qualified persons, such as pensioners or full-time union officers, from carrying out union duties. They may also deprive unions of the benefit of the experience of certain officers, particularly when they are unable to provide enough qualified persons from their own ranks (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 117); especially if at least three of them are required to know how to read and write, as prescribed by the above-mentioned legislation.

> The Committee therefore requests the Government to take the necessary measures to make the legislation more flexible by exempting a reasonable proportion of the officers of an organization from the obligation of being employed in the enterprise.
>
> The Committee again hopes that the Government will pursue its efforts to bring all its legislation into line with the requirements of the Convention, thereby accommodating the comments that the Committee has been making for many years. The Committee asks the Government to provide information in its next report on the measures adopted to give full effect to the Convention.

Guyana (ratification: 1967)

The Committee takes note of the information provided in the Government's latest report.

1. In its previous comments, the Committee had recalled that, when providing for the certification of the most representative union in a given unit as the exclusive bargaining agent, the determination of the most representative organizations must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse. Therefore certain safeguards of objectivity needed to be ensured like, for instance, the establishment of an independent body for certification and the use of a majority vote for determining the most representative union. It notes that the Trade Union Recognition Bill (under consideration since 1979) which is to contain these provisions is presently with the law officers for final drafting. The Committee expresses the firm hope that this Bill will be adopted in the near future and that it will contain the necessary safeguards for an objective determination of the exclusive bargaining agent in a given unit.

2. In comments it has been making since 1983, the Committee has urged the Government to ensure that measures be taken to amend the Public Utility Undertakings and Public Health Services Arbitration Act, Chapter 54:01, so that compulsory arbitration in respect of strikes may only be used for essential services in the strict sense of the term, namely services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee notes from the Government's latest report that the Act has still not been amended but that its observations have been submitted to the employers' and workers' organizations for their comments. The Committee trusts that the necessary measures will be taken in the near future to amend this Act so as to ensure that the right to strike is guaranteed to workers in all services which are not essential in the strict sense of the term and requests the Government to indicate the progress made in this respect.

Haiti (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that it has been requesting the Government for several years to repeal or amend section 236bis of the Penal Code, which requires that government approval be obtained to establish an association of more than 20 persons; section 34 of the Decree of 4 November 1983, which confers wide powers on the Government to supervise the trade unions; and sections 185, 190, 199, 200 and 206 of the Labour Code, which impose restrictions on strikes; as well as to give legal recognition to the right to organize of public servants, in order to bring its legislation into conformity with section 35(3) and (4) of the 1987 Constitution, which provides constitutional guarantees of the freedom of workers in the public and private sectors and recognizes their right to strike, and to bring it into conformity with the Convention.

The Committee notes that the Government gave a formal assurance that section 236bis of the Penal Code would be repealed and that tripartite meetings had been held to prepare a new Labour Code with a view to implementing the necessary reforms. The Committee urges the Government to indicate in its next report the measures which have been taken to guarantee that the requirements of the Convention are respected.

Honduras (ratification: 1956)

The Committee notes the Government's report and recalls that its previous comments concerned:

- the exclusion from the scope of the Labour Code of workers in certain agricultural or stock-raising enterprises (section 2(1));
- the prohibition on more than one trade union in a single enterprise, institution or establishment (section 472);
- the requirement that trade union officers must be Honduran and be engaged in the corresponding occupation (sections 510(a) and 541(c), respectively);
- restrictions on the right to strike (sections 495, 537, 555, 558 and 563).

The Committee notes the information supplied by the Government to the effect that since the new President has taken office, the Minister of Labour has, as a matter of urgency, submitted to the competent authority the reform of the Labour Code now being drafted as part of the modernization and strengthening of the State.

The Committee again expresses the hope that the new Labour Code takes account of the comments that the Committee has been making for many years, and that it will be adopted in the near future.

The Committee again asks the Government to keep it informed of any developments in this respect and to provide a copy of the new Code as soon as it has been adopted.

Hungary (ratification: 1957)

The Committee notes the information supplied by the Government in its last report.

1. The Committee notes, according to the Government's report, that the Act No. 13 of 1993 concerning the protection of trade union property (*Magyar Közlöny*, 12 March 1993, No. 29, pages 1547-1553) and amending Act No. 28 of 11 July 1991 (*Magyar Közlöny*, 17 July 1991, No. 80, pages 1725-1733), reproduces the agreement that it had concluded concerning the distribution of trade union property, with the National Association of Trade Unions (MSZOSZ) and the six National Confederations of Trade Unions. According to the Government, the Act No. 13 guarantees that such property will be so distributed that all trade unions will be placed on an equal footing so as to be able to act in full independence.

2. With regard to the distinction between the most representative trade unions and the others under the provisions of Act No. 33 of 2 June 1992 respecting public employees (*Magyar Közlöny*, No. 56, pages 1953-1964), the Committee notes that in the event of a dispute as to the representativeness of an organization, section 5(3) of the Act provides that the dispute must, at the request of one of the parties concerned, be settled by a court in non-adversarial proceedings and that, as a general rule, the provisions of Act No. 33 do not prevent minority organizations from organizing their activities and representing their members in the event of individual complaints. The Committee considers that the legislation on public employees is not inconsistent with the requirements of the Convention on these points.

Jamaica (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For several years, the Committee has requested the Government to amend sections 9 and 10, paragraphs 1, 2, 4, 5 and 8 of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended in 1978, which empower the Minister to submit an industrial dispute to compulsory arbitration and hence to terminate any strike. The Committee has noted in the past that the list of essential services contained in the legislation is too broadly defined and that the notion of a strike which is liable seriously to jeopardize the interests of the nation can be interpreted very widely.
>
> In the Committee's opinion, the right to strike is one of the essential means which should be available to workers and their organizations to promote and defend their economic and social interests. The Minister of Labour should therefore only be able to have recourse to the courts in the following circumstances: (1) in the event of strikes in essential services in the strict sense of the term, namely those in which the strike would endanger the life, personal safety or health of the whole or part of the population; or (2) in the event of total and prolonged stoppage of work which might constitute an acute national crisis (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraphs 152, 154, 159 and 160).
>
> The Committee notes from the Government's report for the period ending in June 1990 that its comments in regard to the definition of essential services are being examined at the level of the Labour Legislative Subcommittee of the Labour Advisory Committee.
>
> The Committee would ask the Government to indicate in its next report if the Minister of Labour has referred any dispute to compulsory arbitration to put an end to a strike and, if so, in what circumstances and in which sector, and to indicate the measures taken to amend its legislation in order to bring it into conformity with the principles of freedom of association.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1965)

The Committee takes note of the information supplied by the Government in its report as well as the information it provided to the Conference Committee in June 1993 and the discussion which took place there. It also notes the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in a communication dated 19 December 1994.

1. *Denial of the right to organize of fire-fighting personnel.* First of all, the Committee notes the conclusions of the ILO visit to Japan which took place in January 1994 concerning the question of the right to organize of fire-fighting personnel.

The Committee notes from the Government's latest report that consultations have been continuing between the Ministry of Home Affairs and the All-Japan Prefectural Municipal Workers' Union (JICHIRO) in order to find an appropriate solution to the right to organize for fire-fighting personnel. Furthermore, upon the suggestion at a meeting between the Prime Minister and the President of the JTUC-RENGO in April 1994 that the participation of the Fire Defence Agency be strengthened in these consultations, several further consultations have been held since April 1994 with the participation of the Fire Defence Agency. While the Government indicates that it is not yet in a position to submit a report on the conclusion of these consultations, the Ministry of Home Affairs, the Fire Defence Agency and the JICHIRO have agreed to continue more positive consultations and to make their utmost efforts in order to come to a conclusion, which will be acceptable to the Japanese people, as soon as possible. Once the consultation is concluded, the Government will submit additional information. The Committee further notes in this respect the comments made by JTUC-RENGO to the effect that JICHIRO has been continuing consultations in order to reach a settlement by the time of the 82nd Session of the International Labour Conference in June 1995.

The Committee therefore trusts that a solution satisfactory to all parties concerned will be reached in the very near future and that it will ensure the right to organize for fire-fighting personnel. It once again recalls, however, that the right to organize does not necessarily imply the right to strike and that fire-fighting services are considered to be an essential service in the strict sense of the term in which the right to strike may be prohibited.

The Committee requests the Government to supply information in its next report on further developments in the situation and, in particular, on any measures taken or envisaged following the above-mentioned consultations.

2. *Prohibition of the right to strike of public servants.* In its previous comments, the Committee recalled that the prohibition on strikes should be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population. In its latest report, the Government cites several recent judgements of the Supreme Court of Japan which state that the prohibition of strike by public employees is constitutional and further hold that Article 3 of this Convention cannot be interpreted as guaranteeing the right to strike by public employees. In this regard, the Committee would draw the Government's attention to paragraphs 156-158 of its 1994 *General Survey on Freedom of Association and Collective Bargaining* in which it indicates that restrictions on the right to strike of public servants should be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term.

As regards penal sanctions, the Committee notes the indication in the Government's report that it has always properly applied the law, fully recognizing the Committee's previous observations. The Committee must, however, once again point out that penal sanctions should only be imposed where there are violations of strike prohibitions which are in conformity with the principles of freedom of association and that they should be proportional to the offences committed; penalties of imprisonment should not be imposed in the case of peaceful strikes. The Government is requested to indicate in its next report the measures taken or envisaged to limit the restriction on the right to strike of public servants only to those exercising authority in the name of the State or to essential services and to ensure that penal sanctions for strike are confined to the above-mentioned conditions.

Kuwait (ratification: 1961)

The Committee notes with regret that the Government's report contains no new information. It is therefore bound to repeat the comments it has been making for several years on the need to appeal or amend the following provisions of the Labour Code (Act No. 38 of 1964):

(a) — the exclusion from the scope of the Code of employees of the State and public sector, fixed-term workers employed by the State under the regulations concerning the employment of Indian and Pakistani citizens, domestic workers and employees holding similar positions, and seafarers (section 2);

- the requirement of at least 100 workers in order to establish a trade union (section 71) and ten employers to form an association (section 86);
- the requirement that non-Kuwaiti workers must reside in Kuwait for five years before being able to join a trade union, and the requirement that a certificate of good reputation and good conduct be obtained in order to join a union (section 72);
- the requirement that a certificate must be obtained from the Minister of the Interior stating that he has no objection to any of the founder members before a trade union may be established, and the requirement that at least 15 members must be Kuwaiti to establish a union (section 74);
- the prohibition on the establishment of more than one trade union for a particular establishment or activity (section 71);

which are contrary to *Article 2 of the Convention* which provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee also recalls that workers must be able, if they so wish, to establish trade unions outside the existing trade union structure;

(b) — the requirement that trade unions may federate only if they represent the same occupation or industries producing similar goods or providing similar services (section 79);

- the prohibition on organizations and their federations from forming more than one general confederation (section 80);
- the system of trade union unity instituted by sections 71, 79 and 80, read together;

which are contrary to *Articles 5 and 6* under which workers' and employers' organizations shall have the right to establish federations and confederations. The Committee emphasizes that trade union organizations must be able, if they so wish, to associate in federations and confederations outside the existing higher trade union structure;

(c) — the denial of the right to vote and be elected of trade unionists who are not of Kuwaiti nationality, except to elect a representative whose only right is to express their opinions to the trade union leaders (section 72);

- the prohibition on trade unions from engaging in any political or religious activity (section 73);
- the broad powers of supervision of the authorities over trade union books and records (section 76);
- the reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77);

which are contrary to *Article 3* which provides that workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration without any interference by the authorities;

(d) — the restrictions on the free exercise of the right to strike (section 88), which is contrary to the principle that workers and their organizations should be able to formulate their programmes in defense of their economic, social and occupational interests, which may include calling a strike, without interference by the public authorities (*Articles 3 and 10*).

The Committee once again urges the Government to indicate in its next report the measures taken to bring all the above-mentioned legislation into conformity with the requirements of the Convention and reminds the Government that it may request ILO technical assistance on these matters.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Liberia (ratification: 1962).

The Committee notes with regret that for the fifth year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that there has been no change in the legislative situation, which has been the subject of its comments for many years.
>
> The Committee recalls the need to amend or repeal Decree No. 12 of 30 June 1980 which prohibits strikes, section 4601-A of the Labour Practices Law which prohibits agricultural workers from joining industrial workers' organizations, and section 4102, subsections 10 and 11, of the Labour Practices Law which provides for the supervision of trade union elections by the Labour Practices Review Board. The Committee observes that these provisions are still in force and that they are contrary to *Articles 2, 3, 5 and 10 of the Convention*.
>
> Furthermore, the Committee recalls that the right to associate of workers in state enterprises and the public service is still not recognized in the national legislation, despite the Government's assurances in previous reports that the Civil Service Act was to be amended in order to give statutory effect to the right of the workers in this sector to establish and join organizations of their own choosing, in accordance with *Article 2 of the Convention*.
>
> However, in its previous observation, the Committee noted from the information furnished by the Government to the Conference Committee in 1987 that, in practice, there are organizations of public servants and of rural workers, that strikes have occurred without sanctions being applied and that trade union elections are only supervised by the Ministry of Labour at the invitation of the trade union organization in question.

Accordingly, the Committee again urges the Government to take the necessary measures in the very near future to amend its legislation in respect of the above matters which have repeatedly been the subject of its comments.

Luxembourg (ratification: 1958)

Articles 2 and 7 of the Convention (the right of workers, including foreign workers, to form organizations without any restriction whatsoever). The Committee notes with satisfaction the information supplied by the Government in its report to the effect that the Act of March 1994 (Gazette A, No. 17 of March 1994) has repealed section 26(2) of the Act of 21 April 1928 on non-profit- making associations, under which legal personality was not granted to an association unless three-fifths of its members were citizens of Luxembourg, thus bringing its legislation into closer conformity with the Convention.

Madagascar (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. *Privileges granted to trade unions belonging to a revolutionary organization*. With reference to its previous comments, the Committee notes with interest that Ordinance No. 78-006, of 1 May 1978, issuing the Charter of Socialist Undertakings, which only recognized for workers who were members of trade unions belonging to a revolutionary organization the right to be elected to works committees in the above undertakings, thereby applying a distinction between trade union organizations which is of a nature to jeopardize the rights of workers to join the trade union of their choosing, has been repealed by Ordinance No. 92/029, of 17 July 1992, which repeals the above Charter.

2. *Right to organize of seafarers*. The Committee reminds the Government that under the terms of the national legislation no provision explicitly recognizes the right to organize of these workers, even though certain rights relating to the right to organize are recognized by the legislation (the right to conclude collective agreements to determine their wages (section 3.5.03 of the Maritime Code, as amended in 1966), the procedure for the collective settlement of disputes and the right to strike following an opposition to an arbitration award (Act No. 70-002 of 23 June 1970 respecting individual and collective disputes in the merchant navy and its implementing Order No. 3012-DGTP/SSM of 1970)).

In these circumstances, the Committee once again requests the Government to include a provision in its legislation explicitly to guarantee seafarers the right to organize.

3. *Requisitioning of persons*. The Committee recalls that the conditions giving rise to the right to requisition persons set out in Act No. 69-15, of 15 December 1969, have too broad a scope to be compatible with the principles of freedom of association. Indeed, sections 20 and 21 of this Act empower the Minister to resort to this procedure when a situation of national necessity is proclaimed or in the event of a threat to a sector of economic life in order to safeguard the interests of the nation, whereas requisitioning to bring to an end a strike is only admissible in essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety of health of the whole or part of the population, in the case of public servants acting in their capacity as agents of the public authority or in the event of a strike, the extent and duration of which are liable to give rise to an acute national crisis.

The Committee requests the Government to supply information on the cases in which it has requisitioned persons during the period covered by the report and to envisage amending this provision in order to confine its scope to the situations described above.

4. Finally, the Committee is addressing a direct request to the Government concerning the right to organize of public servants.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mali (ratification: 1960)

The Committee notes with interest the information supplied by the Government in its report, to the effect that the Government's technical departments are examining the possibility of amending section 229 of the Labour Code so as to limit the Minister's powers to order compulsory arbitration in order to end a strike to "strikes which, by reason of their scope and duration, could lead to a national crisis". It asks the Government to provide information in its next report on any developments in this area.

With regard to Decree No. 90-562/P-RM, the Committee reminds the Government that exceptions to the principle of the right to strike should be limited to essential services in the strict sense of the term and to public servants exercising authority in the name of the State. The Committee observes that, under the above Decree, maintenance of minimum services may be required in services which are not necessarily essential in the strict sense of the term and in the case of public servants who do not necessarily exercise authority in the name of the State.

The Committee requests the Government in its next report to provide information on the practical application of the Decree of 22 December 1990, including any requisition orders issued, so that it can ascertain whether they are compatible with the Convention.

Malta (ratification: 1965)

The Committee notes the information provided by the Government in its reports. The Committee regrets once again that the Government has taken no action to amend the provisions on compulsory arbitration at the request of one of the parties in its Industrial Relations Act. The Committee would emphasize that it has been making its comments on this incompatibility with the Convention since the 1970s. In its most recent report, the Government merely indicates that the Malta Council for Economic Development on which Government, trade unions and employers' organizations are represented has not published draft proposals for an amendment to the Industrial Relations Act.

Recalling that since 1989 the Government has stated that it would take action to amend the Act, the Committee would reiterate once again that the Government should indicate in its next report the measures that have been taken to bring its legislation into conformity with the Convention. This could be done notably by establishing a system in which recourse to binding arbitration involving the prohibition or interruption of strikes is confined to: (a) public servants exercising authority in the name of the State; (b) essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request such arbitration.

Furthermore, the Committee would once again remind the Government that the International Labour Office is at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention.

Mauritania (ratification: 1961)

The Committee takes note of the information provided by the Government in its last report.

1. *Article 3: Right of organizations to elect their representatives in full freedom.* The Committee notes that the Government states in its report that section 273 of the draft Labour Code takes into account the previous comments of the Committee to the effect that to hold trade union office it is necessary to be of Mauritanian nationality, or for foreign workers to have had exercised the profession which the trade union represents for five consecutive years in the Islamic Republic of Mauritania. The Committee considers however that the text of the previous code was preferable.

2. *Right of organizations to organize their activities and to formulate their programmes freely in order to promote and defend the interests of their members.* The Government states in its report that the restrictions on the right to strike imposed by sections 39, 40, 45 and 48 of Book IV of the Labour Code currently in force could be lifted by the draft Labour Code. While taking note of this information, the Committee once again requests the Government to take the necessary measures, as quickly as possible, to adopt the new Labour Code and to ensure that its provisions will guarantee the right of trade union organizations to have recourse to strike action in order to defend the social, economic and occupational interests of their members. It further requests the

Government to indicate in its next report any progress made in this respect as well as to provide a copy of the new Code once it has been adopted.

Mexico (ratification: 1950)

The Committee notes the Government's report and recalls that its previous comments referred to:

- the prohibition of the coexistence of two or more unions in the same State body (sections 68, 71, 72 and 73 of the Federal Act on State Employees);
- the prohibition on a worker in the service of the State from leaving the union to which he belongs (section 69);
- the prohibition of the re-election of trade union officers (section 75);
- the prohibition on unions of public servants from joining trade union organizations of workers or rural workers (section 79);
- the extension of the restrictions applicable to trade unions in general to the single Federation of Unions of Workers in the Service of the State (section 84); and
- the legal limitation of trade union pluralism at the level of the federation in the banking sector (section 23 of the Act issued under article 123(B)(XIIIbis) of the Constitution).

The Committee regrets to note that the Government has failed to include any new element in its report which would enable it to change the comments that it has been making for many years and that the Government confined itself to including the reiterated points of view of the Federation of Unions of Workers in the Service of the State (FSTSE).

In these conditions, the Committee is bound to express the firm hope that the Government will take measures to bring the Federal Act on State Employees and the Act issued under article 123(B)(XIIIbis) of the Constitution into conformity with the requirements of the Convention and the principles of freedom of association.

The Committee requests the Government to keep it informed in its next report of any development in this respect.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Myanmar (ratification: 1955)

The Committee takes note of the Government's report as well as the written and oral information provided to the Conference Committee in June 1994 and the detailed discussion which took place there. It further notes with concern the conclusions of the Committee on Freedom of Association in Case No. 1752 (295th Report, paragraphs 87-119, approved by the Governing Body at its 261st Session, November 1994) concerning restrictions on the right of seafarers to form an independent trade union for the defence of their basic rights and interests and on their right to affiliate to an international federation, evidence of yet another example of the manner in which freedom of association is denied in Myanmar.

The Committee notes from the Government's report that the National Convention convened to adopt basic principles for framing the new Constitution is still in progress. The Government further indicates that elaborations pertaining to labour issues, including the right of association for workers, shall be made in due course.

The Committee notes that a mission from the ILO was recently in Myanmar with a view to continuing the dialogue on measures to be taken to bring the country's law and practice into conformity with the Convention.

The Committee recalls in this regard that it has been commenting upon the serious incompatibilities between the Government's law and practice, on the one hand, and the Convention, on the other hand, for 40 years. It therefore expresses the firm hope that, with the assistance of the ILO, the Government will take the necessary measures in the very near future to ensure that new legislation is introduced to allow all workers without distinction whatsoever to establish and, subject only to the rules of the organization concerned, to join first-level unions, federations and confederations of their own choosing for furthering and defending their interests, without previous authorization, and to ensure the right of any such first-level union, federation or confederation to affiliate with international organizations, in order to bring its law and practice into full conformity with the requirements of *Articles 2, 5 and 6 of the Convention*. It requests the Government to report in detail on the progress made in this regard and to send a copy of any relevant draft legislation with is next report.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Nicaragua (ratification: 1967)

The Committee notes the information supplied by the Government in its report, and the adoption of the new Labour Code. The Committee recalls that its previous comments referred to:

- guaranteeing the right of association of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops;
- abolishing the requirement of an absolute majority of the workers of an enterprise or work centre for the establishment of a trade union (section 189 of the Labour Code);
- amending the provision on the general prohibition of political activities by trade unions (section 204(b) of the Labour Code);
- amending the requirement that trade union leaders must present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36 of the Regulations on Trade Union Associations);
- allowing foreign workers to have access to trade union office (section 35 of the Regulations on Trade Union Associations);
- lifting the excessive limitations on the exercise of the right to strike, such as the requirement of a majority of 60 per cent for calling a strike, prohibiting strikes in rural occupations when products may be damaged if not immediately disposed of, and the referral of a dispute to compulsory arbitration by the authority, in services which are not essential in the strict sense of the term (sections 225, 228 and 314 of the Labour Code);
- allowing federations and confederations to exercise the right to strike.

In its report the Government sets out a number of provisions of the new Labour Code which was adopted by the National Assembly which, it states, overcome the application difficulties that the Committee has referred to in its comments. So that the

Committee can analyse these provisions, it requests the Government to send the full text of the new Labour Code.

Niger (ratification: 1961)

Article 3 of the Convention. The right of workers' and employers' organizations to elect their representatives in full freedom.

With reference to its previous comments, the Committee notes the information supplied by the Government in its last report to the effect that the revision of the Labour Code, which it has been announcing for a number of years and which is to take into account the Committee's comments, has still not been carried out. The Government adds, however, that the Committee's previous comments have been transmitted to the technical services which should respond as soon as possible.

Under these conditions, the Committee is bound once again to recall that sections 6 and 25 of the Labour Code of 1962, which provide that members responsible for the administration or management of unions or federations must be nationals of Niger, are liable to restrict the full exercise of the right guaranteed by Article 3 of the Convention.

The Committee once again requests the Government to amend its legislation so that foreign workers and employees have access to trade union office, at least after a reasonable period of residence in the country (see 1994 *General Survey on Freedom of Association and Collective Bargaining,* paragraph 118). It expresses the firm hope that the Government will take account of its comments in the planned review of the legislation.

The Committee requests the Government to provide information in its next report on any progress achieved in bringing the legislation into greater conformity with the Convention.

Nigeria (ratification: 1960)

The Committee notes the Government's report, as well as the conclusions of the Committee on Freedom of Association in Case No. 1793 (295th Report of the Committee, approved by the Governing Body at its 261st Session (November 1994)). It recalls that the fundamental discrepancies between national legislation and the Convention concern the following points:

- the single trade union system established by law under which any registered trade union is compulsorily affiliated to the Nigerian Labour Congress, the only central organization, which is designated by name; the establishment of a single trade union for each category of workers in accordance with a pre-established list; too high a number of members for the establishment of a trade union;
- non-recognition of the right to organize of certain categories of workers (employees in the customs service, in mints, in the Central Bank of Nigeria and in the External Telecommunications Company);
- broad powers of the Registrar to supervise the accounts of trade unions at any time;
- the possibility of restricting the exercise of the right to strike through the imposition of compulsory arbitration beyond essential services in the strict sense of the term.

The Committee notes the Government's statement that the subcommittee of the National Labour Advisory Council on the Review of Labour Laws is about to conclude its work and that it will most probably submit its recommendations to the Government before the end of 1994. The Committee once again expresses the firm hope that the

Government will take action on the observations that it has been making for several years with a view to bringing its legislation into conformity with the Convention.

The Committee notes with concern, moreover, that the Government has approved the restructuring of the previous 41 registered industrial unions into 29 workers' unions through the promulgation of Government Gazette No. 24, Vol. 80, of 31 August 1993 entitled ***Revised Structure of Industrial/Workers' Unions***. The Committee observes from the Preamble to this Gazette that the Government approved this restructuring exercise upon the recommendations of the Nigerian Labour Congress (NLC) and the tripartite National Labour Advisory Council in an effort to remove observed anomalies in the structure of trade unions in the country which had been responsible for numerous inter-union disputes and litigation. While noting these reasons, the Committee would point out that this Gazette provides for the establishment of a determined number of trade unions for each occupational category according to a pre-established list thereby confirming the system of trade union monopoly.

The Committee recalls in this context that trade union unity directly or indirectly imposed by law runs counter to the Convention. Furthermore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 96).

The Committee requests the Government to repeal the text published in the Government Gazette on the ***Revised Structure of Industrial/Workers' Unions***.

Finally, the Committee notes from the recent conclusions of the Committee on Freedom of Association in Case No. 1793 that by virtue of the Nigerian Labour Congress (NLC) (Dissolution of National Executive) Decree No. 9 and the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) (Dissolution of Executive Councils) Decree No. 10, both of 18 August 1994, the national executive council members of the NLC, NUPENG and PENGASSAN were removed from office by government authorities and replaced by government-appointed administrators. The Committee considers that such measures constitute a clear violation of the right of organizations to elect freely their representatives expressed in Article 3 of the Convention. Like the Committee on Freedom of Association, it would urge the Government to repeal Decrees Nos. 9 and 10.

The Committee requests the Government to indicate the measures which have been taken to bring the whole of its legislation into conformity with the Convention.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Norway (ratification: 1949)

The Committee notes the Government's reports as well as the observations of the Federation of Offshore Workers' Trade Unions (FOWTU).

In its previous observation, the Committee's comments had concerned the need to remove the restrictions imposed on the right to strike by legislative means in the oil industry through the imposition of compulsory arbitration. The Committee had noted the Government's statement that the tripartite Labour Law Council, an advisory agency to the authorities in matters of labour legislation, was preparing a proposal for a new labour disputes act which would provide for a dispute settlement system along the lines suggested by the Committee.

The Government now indicates that the Labour Law Council will need more time to complete its work since the preparation of a report proposing a new labour disputes act was a complicated task as any basic changes needed to have the full support of the major workers' and employers' organizations. According to the Government, the Council had looked into various bargaining systems functioning in different European countries, and was trying to find a system which was consistent with national concerns and traditions. Based on the report of the Council and the comments received from the organizations concerned, the Government would then prepare and put forward a bill proposing a new labour disputes act.

The Committee trusts that the bill will take account of its previous comments concerning the restrictions or the prohibitions on the right to strike which are compatible with the principles of freedom of association, and encouraging the maintenance of a negotiated minimum service defined by workers and employers in the event of a labour dispute in the oil sector. It requests the Government to keep it informed of any developments in this respect which would bring its legislation into conformity with the Convention.

Pakistan (ratification: 1951)

The Committee notes the information provided in the Government's report and the discussion which took place at the Conference Committee in 1994. It further notes the comments made by the Pakistan Railway Employees Union (PREM) dated 12 April 1994 and the conclusions reached by the Committee on Freedom of Association in Cases Nos. 1696, 1726 and 1771 (292nd, 294th and 295th Reports of the Committee, approved by the Governing Body at its March, June and November 1994 Sessions respectively).

I. The Committee's previous observations referred to discrepancies between national legislation and the Convention on the following points:

- ban on trade union membership and activities for employees of the Pakistan Television Corporation and the Pakistan Broadcasting Corporation;
- denial of the rights guaranteed by the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980 and section 4 of the Export Processing Zone (Control of Employment) Rules, 1982);
- exclusion of public servants of Grade 16 and above from the scope of the Industrial Relations Ordinance, 1969 (section 2(viii) (special provision)); restrictions on recourse to strikes (sections 32(2) and 33(1) of the Ordinance);
- prohibition on minority unions from representing their members in relation to individual grievances;
- artificial promotions used as an anti-union tactic in the banking and finance sector;
- denial of the right to form trade unions for employees in public and private sector hospitals.

1. As concerns Pakistan Television and Broadcasting Corporations (PTV and PBC), the Committee notes with interest from the Government's report that the tripartite Task Force on Labour recommends that the relevant provision of the Industrial Relations Ordinance (IRO) be omitted to allow these workers to form trade unions and carry out trade union activities. The Committee therefore expresses the hope that trade union rights will be restored to the above employees at an early date.

2. As regards the granting of trade union rights in export processing zones (EPZs), the Government refers in its report to the Export Processing Zones Authority (Control of Employment) Rules, 1982, which regulate conditions of employment in EPZs and

provide benefits which are better than those provided to other workers. It is further indicated that, at present, there is only one EPZ employing fewer than 6,000 workers, 80 per cent of which are female. The Government adds that, since the cultural climate in Pakistan is not in favour of unionization of female workers due to social taboos, those workers do not demand that trade union rights under the IRO be restored to them. There is, however, no ban on their forming any association and the Government is considering the matter to see how to apply labour laws equally to all enterprises without discrimination.

The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 1726 (294th Report, June 1994) concerning the non-application of labour legislation to EPZs and its recommendation that the 1992 Finance Act, the Export Processing Zones Authority Ordinance, 1980, and the Export Processing Zones Authority (Control of Employment) Rules be amended to ensure the right to organize for all workers. The Committee notes with interest the recommendation of the tripartite Task Force that it would be desirable to apply labour laws uniformly without discrimination to all organizations since labour laws have a positive role to play in maintaining industrial peace, creating a favourable climate to harmonize the relationship between employers and employees and helping in increasing productivity and production.

3. Regarding the exclusion of civil servants of Grade 16 and above from the scope of the Industrial Relations Ordinance, the Government has indicated in its report that there is no bar on the formation of associations of different categories of employees, however they are subject to certain restrictions to avoid the carrying out of activities that are harmful to the basic aims and objectives of their establishments, such as the engagement in political activities, the issuance of periodical publications or publishing representations of their members without prior government approval. The Committee had already noted these same restrictions in the Sindh Government Servants (Conduct) Rules in its previous comments. It would once again recall that such restrictions are incompatible with the right of workers' organizations to elect their representatives in full freedom and to organize their administration and activities without government interference in accordance with *Article 3 of the Convention*. Furthermore, the Committee would draw the Government's attention to paragraph 86 of the 1994 *General Survey on Freedom of Association and Collective Bargaining* wherein it indicates that provisions stipulating that different organizations must be established for each category of public servants (for example, where trade union membership is reserved to public servants in the same unit) are incompatible with the right of workers to establish and join organizations of their own choosing. The Committee has, however, considered it admissible for first-level organizations of public servants to be limited to that category of workers provided that their organizations are not also restricted to employees of any particular ministry, department or service, and that they may freely join federations or confederations of their own choosing, like organizations of workers in the private sector.

As the Government has still not supplied the requested information relating to the size and activities of the existing associations of civil servants, the Committee once again requests the Government to supply this information with its next report.

4. With respect to restrictions on the right to strike, the Government indicates in its report that the Pakistan Essential Services (Maintenance) Act of 1952 is only applied to employment organizations which meet defence needs or concern the life of the community. The main concern is to ensure the economic viability of national priority programmes and it is, therefore, in the national interest to ensure that industrial action does not continue for an indefinite period.

The Committee notes with interest the Government representative's statement at the Conference Committee to the effect that the present Government had decided not to apply the Essential Services Act to any new establishment and to redefine the Act with a view to bringing it into conformity with the Convention. He added that the existing list of establishments under the Act would be gradually reduced to a minimum; three establishments having already been removed from the list. Furthermore, the Committee notes with interest that the tripartite Task Force recommends that the definition of essential services be brought into conformity with the principles of freedom of association.

5. As concerns the right of representation of minority unions, the Government states that it has taken note of the Committee's previous comments and is taking all possible measures in consonance with the Convention to protect the rights of minority unions accordingly.

6. With regard to artificial promotions in the banking and financial sector, as well as in the steel industry, designed to undermine the membership of workers' unions (see Cases Nos. 1534 and 1771), the Committee recalls that section 2(xxviii) of the IRO excludes from the definition of "worker" any person "who, being employed in a supervisory capacity, draws wages exceeding 800 rupees per mensum". As the report of the direct contacts mission to Pakistan indicates that the minimum wage is 1,500 rupees, the definition of "worker" is meaningless. The Committee would draw the Government's attention to paragraph 66 of its *General Survey on Freedom of Association and Collective Bargaining* wherein it has considered that legislation which allows for the granting of fictitious promotions to unionized workers without actually according them management responsibilities, thereby effectively placing them in the category of so-called "employers" to whom the right to organize is not permitted, is not in accord with the Convention, since the end result is to deny the right of association and artificially reduce the size of the bargaining unit. It therefore requests the Government to amend the definition of "worker" so as to prevent the undermining of workers' organizations through artificial promotions and to grant all workers, without distinction whatsoever, the right to establish and join organizations of their own choosing.

7. Regarding the denial of the right to form trade unions for employees in public and private sector hospitals, the Government has indicated in its report that the application of the Essential Services Act to these workers does not mean that they do not have the right to organize and, hence, they have the legal right to form associations. The Committee would note however that hospital employees are excluded from the IRO under section 1(3)(f). It therefore requests the Government to supply information on the legislative provisions actually in force which ensure hospital employees the right to establish and join organizations of hospital employees for furthering and defending their professional interests, as provided in the Convention, and to indicate the size and activities of the associations in this sector.

II. The Committee also notes with concern that the following categories of workers have recently been denied the right to organize:

1. *Railway employees*. The Committee notes that the comments made by the Pakistan Railway Employees' Union concern a ministerial circular which classifies most railway lines as Ministry of Defence Lines and bans railway employees from taking part in any trade union activities. It notes that this circular has been the subject of a complaint examined by the Committee on Freedom of Association in November 1994 (295th Report) and that the Government had, at that time, indicated that the circular in question had been challenged before the Lahore High Court and was still *sub judice*. The Committee recalls that *Article 2* of this Convention provides that the right to establish

and join an organization of one's own choosing applies to all workers "without distinction whatsoever" and notes with interest that the preliminary report of the tripartite Task Force on Labour recommends that this circular be withdrawn to enable railway workers to exercise their right of unionization without any restrictions or conditions. The Committee trusts that the Government will take the necessary measures to ensure that all workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing and requests the Government to indicate in its next report the progress made in restoring this right to railway workers.

2. *Forestry workers.* The Committee notes the recommendations made by the Committee on Freedom of Association in Case No. 1696 concerning the refusal to register a union of forestry workers because they were not covered by the definition of the term "worker" in the Industrial Relations Ordinance of 1969 as they were considered to be civil servants. As recalled above, the right to establish and join an organization of one's own choosing applies to all workers "without distinction whatsoever" and therefore also applies to employees of the State. It therefore requests the Government to indicate the measures taken or envisaged to ensure that employees of the State in general and forestry workers in particular are granted the right to establish and join organizations of their own choosing.

III. The Committee hopes that the Government will continue to take advantage of the technical assistance of the ILO in order to bring, at an early date, its legislation into conformity with the requirements of the Convention, in particular, as concerns the right of all workers — including employees of the PTC and the PBC, workers in export processing zones, public servants, hospital workers, railway employees and forestry workers — to establish and join organization of their own choosing without previous authorization and as concerns the right to strike. It asks the Government to report in detail on any progress made in this regard.

Panama (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. With regard to the authorities' wide powers of supervision over the records and accounts of trade unions (section 376(4) of the Labour Code), the Committee notes Decision No. D.M. 23/92 of 21 May 1992 in which the number of documents required is reduced and the effects of section 376(4) of the Code are limited. The Committee hopes that in the near future this provision of the Labour Code will also be amended.
>
> 2. With reference to the restrictions on the right to strike (Act No. 13 of 1990), the Committee notes that Act No. 2 under which collective bargaining is reinstated and other labour provisions adopted, was approved by the Legislative Assembly on 13 January 1993 and repeals section 452(4) of the Labour Code respecting compulsory arbitration in enterprises when the continuation of the strike could result in serious economic problems for the enterprise.
>
> The Committee wishes nevertheless to remind the Government of the comments which it has been making for several years with regard to the following points:
>
> - the exclusion of public servants from the scope of the Labour Code and consequently from the right to organize and bargain collectively (section 2(2) of the Labour Code);
> - the requirement, under section 344 of the Code, of too high a number of members to establish an occupational organization;
> - the requirement that 75 per cent of trade union members are Panamanian (section 347); and

- the automatic removal from office of a trade union officer in the event of his dismissal (section 359).

With regard to the exclusion of public servants from the scope of the Labour Code and consequently from the right to organize, the Committee notes the information supplied by the Government that it has formally submitted a Bill respecting administrative careers to the Legislative Assembly for examination and approval. In this connection, the Committee notes that Bill No. 1, establishing and regulating administrative careers, does not contain any provisions on the right to organize of public servants. It only refers to the right to join associations to promote and give some dignity to public servants (section 128(8)) of the Bill, but not to the right to organize of public servants to defend their occupational interests. The Committee requests the Government to take the necessary measures in this respect.

With regard to the requirement of too high a number of members to establish an occupational organization (section 344 of the Labour Code) and the requirement for 75 per cent of the union members to be of Panamanian nationality (section 347 of the Code), as well as the automatic removal from office of an enterprise-level trade union officer in the event of his dismissal (section 359 of the Code), the Committee notes that, according to the indications provided by the Government, possible reforms of these provisions would be dealt with in a tripartite manner within the framework of a concerted social process.

The Committee also notes that the final paragraph of section 64 of the Political Constitution, and section 369 of the Labour Code, require that the executive board of a trade union organization be composed exclusively of persons of Panamanian nationality.

In this context, the Committee is of the opinion that the legislation should be made more flexible in order to permit organizations to choose their leaders without hindrance and also to permit foreign workers to hold trade union office, at least after a reasonable period of residence in the host country (see paragraph 118 of the 1994 *General Survey on Freedom of Association and Collective Bargaining*).

The Committee again expresses the strong hope that the necessary measures will be taken to harmonize the legislation more fully with the Convention and reminds the Government that the ILO is available for technical cooperation in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1960)

The Committee notes the Government's report and the information noted by the Committee on Freedom of Association in Cases Nos. 1648, 1650 and 1731 (294th Report, paragraphs 22 and 27, approved by the Governing Body at its 260th Session, June 1994).

The Committee recalls that its previous comments referred to various provisions of the Industrial Relations Act of 1992 and its Regulations, namely:

- denial of trade union membership during the work probation period (section 12(c));
- the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation or for various occupations (section 14);
- the requirement that, in order to be eligible for trade union office (section 24), workers must be active members of the union (section 24(b)) and must have been in the service of the enterprise for at least one year (section 24(c));
- the ban placed on trade unions from engaging in political activities (section 11(a));
- the excessive restrictions on the right to strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);

- the obligation placed upon trade unions to compile the reports which may be requested from them by the labour authorities (section 10(f));
- the power of the labour authority to cancel the registration of a union (section 20 of the Act), and the requirement that the union must wait six months after the cause of the cancellation has been remedied before re-applying for registration (section 24 of the Regulations); and
- the prohibition placed on public servants' federations and confederations from affiliating with organizations that represent other categories of workers (section 19 of Presidential Decree No. 003-82-PCM).

The Committee notes with interest, as does the Committee on Freedom of Association, that the Government intends to submit to the Commission responsible for formulating the preliminary draft text of the General Labour Act, amendments to sections 14 and 10 to reduce by 50 per cent the minimum number of 100 workers required to establish trade unions other than at the enterprise level and to eliminate the obligation for trade unions to compile any reports which might be requested by the labour authority. It also notes with interest that the requirements set out in section 24 respecting the need to be an active member of the trade union (section 24(b)) and to have been in the service of the enterprise for more than one year (section 24(c)) in order to hold trade union office would no longer remain in force.

The Committee takes due note of the Government's comments concerning the ban on trade unions from engaging in issues of party politics (section 11(a)) to the effect that trade unions are under no prohibition from expressing their points of view as regards the social and economic policy of the Government and that, with respect to section 20, the definitive cancellation of the registration of a trade union is only possible by a decision of the judicial authority. The Committee requests the Government to supply information on the manner in which these provisions are applied in practice.

With regard to the denial of the right to trade union membership for workers during their probation period (section 12(c)), the Committee notes the Government's comments that the above section is designed to establish a degree of permanency in trade union organizations and to avoid disputes concerning the protection against anti-union discrimination (fuero sindical). In this regard, the Committee once again reminds the Government that a limitation of this nature is contrary to Article 2 of the Convention, since it prevents this category of workers from joining trade union organizations of their own choosing.

With regard to the restrictions on the right to strike (section 73), under which a strike has to be in defence of occupational rights and interests (section 73(a)) and the requirement that the decision to call a strike has to be taken by more than half of all the workers concerned (section 73(b)), the Committee notes the Government's comments to the effect that, on the one hand, permitting strikes to resolve economic and social policy issues would imply a distortion of the fundamental purpose of the right to strike and, on the other hand, the above section contains the substantive and formal requirements needed to guarantee that the right to strike is exercised respecting the wishes of the majority of the workers.

The Committee recalls as regards section 73(a) that although strikes that are purely political in character do not fall within the scope of the Convention, nevertheless "organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living" (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 165). With regard to section 73(b), the Committee considers the requirement could render it difficult to call a strike, particularly in large enterprises. In the Committee's opinion, the legislation should ensure that account is taken only of the votes cast, and that the required quorum and majority for calling a strike are fixed at a reasonable level (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 170).

With regard to the imposition of compulsory arbitration in essential public services (sections 67 and 83(g) and (j)), the Committee recalls its opinion that such arbitration should only be imposed in essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 159).

With regard to the prohibition placed upon public servants' federations and confederations from affiliating with organizations that represent other categories of workers, the Committee notes the Government's comments to the effect that there are specific mechanisms for the resolution of labour disputes in the public sector. Nevertheless, the Committee once again points out that, although first-level organizations of public servants and employees may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their choosing, including those which also group together organizations from the private sector (see *General Survey*, op. cit., paragraph 193).

Although the Committee notes with interest that, in accordance with the Government's statement and taking into account the recommendations of the Committee on Freedom of Association, the Government will submit to the Commission responsible for formulating the preliminary draft text of the General Labour Act various amendments designed to improve the provisions respecting freedom of association, it requests the Government when submitting these amendments to take into account all the comments of the Committee with a view to: permitting workers undergoing a period of probation to join organizations of their own choosing; reducing the minimum number of workers required in order to form trade unions by branch of activity, occupation or for various occupations; enabling workers to elect their leaders in full freedom; reducing the excessive restrictions on the exercise of the right to strike; and lifting the prohibition placed on first-level federations of public servants from affiliating with confederations of their own choosing.

The Committee requests the Government to supply information on the measures adopted in this respect in its next report.

Furthermore, the Committee is addressing a request directly to the Government.

Philippines (ratification: 1953)

With reference to its previous observations, the Committee notes the information provided by the Government in its latest report, as well as the conclusions of the Committee on Freedom of Association in Cases Nos. 1572, 1615 (292nd Report, approved by the Governing Body in March 1994) and 1718 (295th Report, approved by the Governing Body in November 1994).

I. *Article 3 of the Convention*. 1. In previous comments, the Committee has noted that sections 263(g) and (i) of the Labor Code restrict the right to strike in non-essential services by imposing compulsory arbitration when, in the opinion of the Secretary of

Labor and Employment, a planned or current strike affects an industry indispensable to the national interest. The Committee notes with interest from the Government's report that amendments to this section have been proposed in Senate Bill No. 1757 which seeks to limit this power only to disputes affecting industries performing essential services (meaning "medical, water supply, telephone, electric, national mass transport and other similar services, the disruption of which services could endanger the life and safety of the general public") and that the Bill has recently been filed with the Senate Committee of Labor and Human Resources Development for deliberation and public hearings.

With respect to the inclusion of national mass transport as an essential service, the Committee, like the Committee on Freedom of Association with respect to the question of strikes in transport services, is of the opinion that such services are not in themselves essential services in the strict sense of the term, that is, those the interruption of which would endanger the life, personal safety or health of whole or part of the population. However, the Committee, like the Committee on Freedom of Association, is mindful of the difficulties and inconveniences that the population living on islands could be subjected to following a stoppage in transport services and considers that, in such a situation, the Government might try to conclude an agreement on minimum services to be maintained (291st Report, paragraph 156 (Norway)). The Government might therefore wish to consider establishing a minimum service, in consultation with the workers' and employers' organizations concerned, for national mass transport, similar to the effective skeletal workforce proposed in the Bill with respect to medical institutions.

Furthermore, the Committee notes that the amendments proposed in the Bill with respect to the powers of the President would, if adopted, permit intervention in strikes without limitation, whereas such power should be restricted to situations of acute national crisis, and in such cases, limited in duration, to interventions with respect to essential services in the strict sense of the term, and to public servants exercising authority in the name of the State.

2. The Committee notes with regret that the Government has not replied to the comments it has been raising for several years concerning penalties in the Labor Code for participation in illegal strikes: the dismissal of trade union officers (section 264(a)); penal liability to a maximum prison sentence of three years (section 272(a)); or imprisonment for the organizers or leaders of strikes and participants in pickets deemed to be for propaganda purposes against the Government (section 146 of the revised Penal Code).

Furthermore, while noting the Government's reiteration that the limitation of the right to elect workers' representatives freely by virtue of Rule II(3)(f) of Book V implementing the Labor Code (officers of a union operating in an enterprise must be employed there) was intended to ensure democratic representation of the workers in the establishment and that no complaints have arisen in this regard from either sector, the Committee points out that such legislation entails the risk of interference by the employer through the dismissal of trade union leaders for the exercise of legitimate trade union activities with the result (or even the intention) of depriving them, in the future, from holding a position as a trade union officer. This is evident particularly in the case of section 264(a) of the Labor Code which permits the dismissal of trade union officers for participating in an illegal strike, who then, in turn, would no longer be eligible for a post as union officer.

The Government states that it is nevertheless taking into account the Committee's comments on this matter and will try to temper, as much as possible, the application of this requirement, particularly when it would pose difficulties in the workers' exercise of their fundamental rights. The Committee therefore hopes that the Government will take the necessary measures to render this requirement more flexible so as to allow, for example, a reasonable proportion of a union's officers to come from outside the particular enterprise or to admit as candidates persons who have previously been employed in the occupation or enterprise concerned (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 117).

The Government is requested to indicate, in its next report, the progress made in bringing its legislation concerning strikes into conformity with the principles of the Convention and to supply copies of any texts adopted in this regard.

II. The Committee would also recall the following further discrepancies between the Labor Code and the provisions of *Articles 2 and 5 of the Convention*: (i) the requirement that at least 20 per cent of the workers in a bargaining unit are members of a union for the union to be registered (section 234(c)); (ii) the requirement of too high a number of unions (ten) to establish a federation or a central organization (section 237(a)); (iii) the prohibition of aliens — other than those with valid permits if the same rights are guaranteed to Filipino workers in the country of origin of the alien workers — from engaging in any trade union activity (section 269) under penalty of deportation (section 272(b)).

Noting that the Government has sought technical assistance from the International Labour Office for the reform of national labour laws, the Committee expresses the firm hope that its comments on the above points will be taken into account in order to bring these legislative provisions into conformity with the Convention and requests the Government to indicate, in its next report, the progress made in this regard.

III. Finally, the Committee had noted in its previous comments information which had been given to the Committee on Freedom of Association on the passage through Congress of a new Civil Service Code which would grant government workers the right to strike in certain circumstances, in accordance with the Filipino Constitution (article XIII(3) which grants all workers the right to strike). The Government is requested to indicate, in its next report, whether this Code has indeed been adopted and to supply a copy with its next report.

Poland (ratification: 1957)

The Committee notes the Government's report, the comments of the independent self-governing trade union "Solidarnosc" and the latter's representation submitted under article 24 of the ILO Constitution (Case No. 1785) (see 295th Report of the Committee on Freedom of Association, November 1994, paragraph 11).

The Committee notes that the Committee on Freedom of Association has decided to adjourn its examination of Case No. 1785 and has asked the Government to keep it informed of the results of the round table to be held shortly with representatives of the complainant organization and of the All-Poland Trade Union Alliance (OPZZ) concerning the distribution of the assets of the Central Council of Trade Unions, on which, according to the Government, it should be possible to reach a common agreement.

The Committee again expresses the hope that the Government and all the trade union organizations concerned will continue to seek, by negotiating in good faith, an equitable solution so as to ensure that all the trade unions, on an equal footing, are able effectively to exercise their activities in full freedom.

The Committee is also addressing a direct request to the Government concerning some other points.

Portugal (ratification: 1977)

The Committee notes the Government's report.

The Committee recalls that for many years its comments have referred to the need to bring into conformity with the Convention and national practice the following provisions of national legislation (which require too high a number of workers and employers to establish a representative organization): section 8(2) of Legislative Decree No. 215/B/75, which requires 10 per cent or 2,000 of the workers concerned, and section 7(2) of Legislative Decree No. 215/C/75, which requires one-quarter of the employers concerned to establish a representative organization; section 8(3) of Legislative Decree No. 215/B/75, which requires one-third of the trade unions of a region or category, and section 7(3) of Legislative Decree No. 215/C/75, which requires a minimum of 30 per cent of employers' associations to establish a group or a federation.

The Committee notes the Government's indication in its report that: (1) sections 8(2) and (3) of Legislative Decree No. 215/B/75 and section 7(2) and (3) of Legislative Decree No. 215/C/75 are no longer in force due to their incompatibility with the Constitution and international Conventions, on the grounds that the Portuguese legal system includes the concept of implicit derogation, which has the same value as explicit derogation; and (2) that the provisions in question will be expressly repealed when the legislation is revised, which is not currently envisaged.

In these conditions, the Committee once again draws the Government's attention to the need to explicitly amend the provisions in question and requests it to transmit with future reports any draft text which it envisages adopting in this respect.

Rwanda (ratification: 1988)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which addressed the following issues:

> The Committee requests the Government to indicate in its next report the measures which have been taken or are envisaged to amend section 26 of the Legislative Decree of 19 March 1974 to issue the general conditions of service of employees of the State which, under its present wording, continues to forbid state employees to take part in strikes or in activities aimed at causing a strike in the state services, with a view to limiting the restrictions on the right to strike to those which accord with the principles of freedom of association, namely to public servants exercising authority in the name of the State or to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.
>
> The Committee also requests the Government to indicate the measures which have been taken or are envisaged to amend section 8 of the Labour Code which prohibits occupational organizations of employees to elect trade union officers who are not of Rwandan nationality, in order to permit foreign workers to hold trade union office after a reasonable period of residence in the country (see paragraph 118 of the 1994 *General Survey on Freedom of Association and Collective Bargaining*).
>
> The Committee would moreover remind the Government that the International Labour Office is at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention.
>
> The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Senegal (ratification: 1960)

The Committee recalls that its previous comments concerned the need to amend the national legislation in order to:

- guarantee that trade union organizations are not subject to dissolution by administrative means (Act No. 65-40 of 22 May 1965);
- allow foreign workers to hold trade union office (section 7 of the Labour Code);
- restrict the powers of the authorities to impose compulsory arbitration to bring an end to a strike (sections 238-245 of the Labour Code) to essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's statement in its report that it will take all necessary steps to complete the reforms currently under way to bring laws and regulations into conformity with the relevant international standards and that it will seek the technical assistance of the ILO if this proves essential.

The Committee again asks the Government to indicate in its next report the measures taken to bring its legislation into conformity with the Convention, and to provide the texts of any amendments to laws or regulations that have been adopted in this connection.

Seychelles (ratification: 1978)

Referring to its previous longstanding comments concerning the legislative imposition of a trade union monopoly, the Committee notes with interest the entry into force on 1 January 1994 of the Industrial Relations Act of 1993 which according to the Government in its report allows for the formation of multitrade unions. It notes in particular that since the enactment of the said Act, six trade unions have been registered and that the National Workers' Union (NWU) is entitled to register under the Act (section 6(1) and (5)).

The Committee would ask the Government to indicate whether the NWU has been registered and to supply a copy of the Rules of the said union currently in force.

In addition, the Committee is addressing a direct request to the Government on a number of issues relating to the new Act.

Swaziland (ratification: 1978)

The Committee notes the Government's reports. With reference to its previous comments, the Committee recalls that the discrepancies between the legislation and the Convention relate to the following points under the 1980 Industrial Relations Act:

Article 2 of the Convention

- non-recognition of the right of association of prison staff (section 83(c));
- obligation upon workers to organize within the context of the industry in which they exercise their activity (section 2(1) and (2));
- power of the Labour Commissioner to refuse to register a trade union if he considers that the interests of the workers are fully or substantially represented by a trade union that has already been registered (section 23), even though, by virtue of section 24(1)(d) an appeal may be made against such a refusal before the Labour Tribunal;
- obligation for an occupational organization or federation to obtain authorization before affiliating with any international organization (section 34(1)).

Article 3 of the Convention

- prohibition on federations from carrying out political activities and limitation of their activities to providing advice and services (section 33);
- prohibition of the right to strike in certain sectors or services, including, in particular, the postal, radio and teaching sectors (section 65(6));
- power of the Minister to refer any dispute to compulsory arbitration if he considers that a current or pending strike constitutes a threat to the national interest (section 63(1)).

The Committee notes the information provided by the Government according to which, following technical assistance from the ILO, a draft Industrial Relations Bill has been submitted to the Labour Advisory Board (LAB) which will soon look into the matter. The Government also indicates that the recommendations made by the Committee and the Wiehahn Commission will be taken into consideration when the final draft is under discussion.

Recalling that these draft amendments to the Industrial Relations Act were submitted to the LAB for perusal in 1992, the Committee requests the Government to ensure that these amendments to the Act are adopted in the near future. It requests the Government to keep it informed of any developments in this respect.

The Government also states that it is considering the communication of the World Confederation of Organizations of the Teaching Profession (WCOTP) dated 15 December 1992, in which the WCOTP asks the ILO to intervene with the Swazi authorities in order to obtain the repeal of the provision in the Industrial Relations Act of 1980 which classifies teaching as an essential service.

The Committee recalls that the ILO supervisory bodies have held that a strike in the teaching sector does not endanger the life, personal safety or health of the whole or part of the population and therefore cannot be considered to be an essential service and would ask the Government to ensure that the said provision is repealed in conformity with freedom of association principles. It requests the Government to keep it informed of developments in this respect.

Switzerland (ratification: 1975)

The Committee notes the Government's report concerning the application of the Convention.

1. *The ban on strikes by public employees.* With reference to its previous comments on the need to amend the national legislation (section 23(1) of the Federal Act of 30 June 1927, banning strikes by public servants), in order to ensure that public employees other than those exercising authority in the name of the State, and their organizations, have the right to strike as a means of defending their economic, social and occupational interests, the Committee notes the Government's indication in its report that the federal Declaration concerning the total revision of the 1927 Act will not be adopted before 1995, and that it is therefore unable to provide particulars of the amendments envisaged.

The Committee must therefore express once again the hope that the Declaration concerning the total revision of the Federal Act on the conditions of service of the public service will take account of the principles of freedom of association and, in particular, that it will not deny public servants other than those who exercise authority in the name of the State the right to strike in order to defend their occupational interests if they so wish (see 1994 *General Survey on Freedom of Association and Collective Bargaining,* paragraph 158). It again asks the Government to indicate in its next report any measures taken in this regard.

2. *Penalties imposed on railway men for striking in 1989.* While recalling that the exercise of the right to strike does not in principle justify the imposition of sanctions on striking workers and that the maintaining of the employment relationship is a normal legal consequence of the recognition of the right to strike (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, page 139), the Committee notes with interest that, in its report, the Government indicates that the representative of the railway men concerned has been contacted with a view to quashing the above penalties which, in any case, have not yet been applied since the appeal has the effect of suspending their execution. In view of the fact that an agreement on the matter should be signed in the near future it is unlikely, according to the Government, that there will be a court decision on the matter. The Committee asks the Government to provide a copy of the above agreement.

Togo (ratification: 1960)

Right of workers without distinction whatsoever to form and join trade unions, including in export processing free-zones

1. *Article 2 of the Convention.* With reference to its previous direct requests, the Committee regrets to note that the Government's report contains no information on labour relations in the industrial free-zones on its territory. It therefore once again asks the Government in conformity with the requirements of the Convention to indicate whether the provisions of the 1974 Labour Code apply to labour relations between employers and workers in the export processing zones established under Act No. 98-14 of 18 September 1989. It requests it to provide the texts of any collective agreements covering workers in the above zones.

Right of workers' organizations to elect their representatives freely

2. *Article 3.* The Committee notes with interest that the Government has taken note of the need to amend section 6 of the Labour Code prohibiting foreigners from carrying out administrative or management functions in trade unions. It asks the Government to take the necessary measures in the near future to bring its legislation into line with the requirements of the Convention and to keep it informed of any developments in this respect, and to send a copy of the amended Labour Code.

Deduction of trade union dues

3. The Committee takes due note of the Government's statement in its report that section 4(3) of the 1974 Labour Code, which provides that trade union dues may be deducted from the salaries of workers following their written consent, is now being applied in practice.

Trinidad and Tobago (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee takes note of the information supplied by the Government in its report, from which it appears that several drafts have been prepared and that the Fire Service Amendment Bill 1990, the Prison Service Amendment Bill 1990, and the Civil Service (Amendment) Bill 1990 are still under discussion.

The Committee had stressed in its previous comments the need to amend provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (sections 24(3) of the Civil Service Act, 28 of the Fire Service Act and 26 of the Prison Service Act).

The Committee asks the Government to give information, in its next report, on any progress in this matter, and to indicate whether the above-mentioned Bills have been promulgated and, if so, to provide copies of the texts.

2. The Committee had also recalled the need to amend section 59(4)(a) of the Industrial Relations Act, so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike, as well as sections 61 and 65 of the same Act, to ensure that any resort to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis.

The Committee hopes that the Government will make every effort to take the necessary steps in the very near future to bring its legislation into conformity with the principles of freedom of association. It asks the Government to give information in its next report on any measures taken in that matter and on any cases where the Ministry of Labour has had recourse to the courts to end a strike during the reporting period.

3. In its previous comments, the Committee had referred to comments by the Staff Association of the Central Bank in 1990. It had noted that, according to the Government, the Central Bank Act 1964 was being reviewed and that consideration would be given to the establishment of an appropriate mechanism to deal with the grievances of Central Bank employees. The Committee requests the Government to give full details on that question in its next report.

Tunisia (ratification: 1957)

With reference to the comments it has been making for very many years, the Committee notes with satisfaction the legislative amendments introduced by Act No. 94-29 of 21 February 1994 amending certain provisions of the Labour Code. It notes in particular that section 381ter allows the Prime Minister to refer a dispute to arbitration only if it concerns an essential service in the strict sense of the term, namely a "service the interruption of which would endanger the life, personal safety or health of the whole or part of the population". Noting that the list of essential services is to be established by decree, the Committee asks the Government to provide a copy of any such decree that is adopted.

The Committee notes, however, that section 376bis under which strikes are unlawful unless they are approved by the central workers' union (new section 387) does not seem to have been amended. The Committee emphasizes again that this provision is liable to restrict the right of first-level unions to organize their activities (*Article 3 of the Convention*) and promote and defend the interests of the workers (*Article 10*). The Committee again asks the Government to take the necessary steps to bring its legislation into closer conformity with the principles of freedom of association by allowing such matters to be regulated by trade union statutes, and to provide information on any developments in this respect in its next report.

United Kingdom (ratification: 1949)

The Committee takes note of the information provided in the Government's latest report as well as the comments made by the Trades Union Congress (TUC) in a communication dated 10 January 1995 which have been sent to the Government for its observations.

1. *Dismissal of workers at the GCHQ*. In its previous comment, the Committee noted the resumption of dialogue between the Government and the unions concerning the right to organize for GCHQ workers and expressed the firm hope that these discussions would lead to a positive outcome which was satisfactory to both parties. From the information provided in the Government's latest report, it appears that the last discussion which took place on this matter was during a meeting between the Prime Minister and the unions in December 1993. According to both the Government and the TUC these discussions unfortunately did not lead to any agreement. At this meeting, the Government had indicated its willingness to enable the Government Communications Staff Federation (GCSF) (the workers' organization accepted by the Government at GCHQ) to affiliate with the Council of Civil Service Unions (CCSU) thus permitting the staff of GCHQ to be represented in discussions between the Government and the Civil Service Unions on matters affecting the civil service generally. The Government also indicated during this meeting that the possibility had not been ruled out that, as part of their proposal, the requirement for the GCSF to have the approval of the Director of GCHQ might be withdrawn. For its part, the TUC has indicated that any arrangement which excludes the possibility of GCHQ staff from joining an independent union would not be satisfactory.

The Committee also notes the indication in the Government's report however that it could not accept a proposal to allow GCHQ staff to rejoin one of the national civil service unions since it would risk the staff once again being exposed to a conflict between their loyalty to their employer and their loyalty to their trade union, a risk which would not be removed by an undertaking on the part of the unions not to call GCHQ staff out on strike because any such undertaking could subsequently be repudiated, as had been done in the past. For its part, the TUC indicated that, during the meeting with the Prime Minister, it repeated its previous assurances and additionally pointed out the legal changes which required a ballot before a call for industrial action. In this regard, the Committee recalls from its previous comments that workers whose functions relate to security matters would fall into the category of those in respect of whom it is permissible to prohibit by legislation the right to strike. The question of the right to strike for GCHQ staff and of the right to organize are however separate matters.

As concerns the Government's statement in its report that the Intelligence Services Act (ISA) of 1994 places the GCHQ on a statutory basis together with the intelligence service and that the functions carried out by the GCHQ are, in many other countries, carried out by the military, either directly or indirectly even though they are sometimes staffed by a mixture of civilian and military personnel, the Committee notes the provision in the ISA that GCHQ shall continue to be under the authority of the Secretary of State. While the examples given by the Government concerning other countries described situations in which the organizations concerned were either run by the military or under the authority of the Department of Defence or its equivalent, it does not appear from the ISA that this is the case for GCHQ. The Committee therefore considers that GCHQ staff cannot be considered to be members of the armed forces for the purposes of exclusion under Article 9.

Finally, as concerns the Government's renewed argumentation with respect to the interrelationship of Conventions Nos. 87 and 151, the Committee recalls its previous comments in this regard and considers that the points raised by the Government do not call for any further examination of the question.

Given the above considerations and noting that the Government's proposal remains firm that GCHQ staff can only be represented by GCSF, the Committee recalls that these workers should be guaranteed the right to establish and to join organizations of their own choosing, in accordance with Article 2 of the Convention. Furthermore, given the apparent lack of recent direct dialogue on these matters, it once again urges the Government to take steps to resume discussions with the unions with the aim of finding a satisfactory solution to all parties concerned.

2. *Unjustifiable discipline (sections 64-67 of the 1992 Trade Union and Labour Relations (Consolidation) Act)).* The Committee recalls that the previous comments in this matter concerned the above-mentioned provisions of the 1992 Act which prevented trade unions from disciplining their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action. The Committee noted that while, technically, these sections imposed no direct or explicit limitation on what may or may not be included in trade union rules, trade unions would face serious financial penalties for taking disciplinary measures against a member for such action. It considered that these provisions removed the right of trade unions to express their dissatisfaction with their members who refused to comply with or sought to subvert democratic decisions by other union members to take lawful industrial action and requested the Government to amend these provisions with this in mind.

In its latest report, the Government states that the effect of disciplinary penalties imposed on members by their union could be much more serious than those which would follow from the mere "expression of dissatisfaction" in so far as such penalties were designed to ***persuade*** members ***in general*** that, by their own ***free choice***, they ***ought*** not to be honouring their contract of employment when called upon the union not to do so and this should not be condoned by the law; there is no demonstrable evidence to show that the relevant provisions have, in practice, done any damage to the "normal functioning of trade unions"; the legislation only proscribes certain specific forms of discipline as unjustifiable. The Government then concludes that there is no need to amend sections 64-67 of the 1992 Act.

The Committee nevertheless stresses that the right of workers' organizations to draw up their constitutions and rules guaranteed by Article 3 of the Convention includes the right (without threat of serious financial penalties upon the application of their rules) of unions, when drawing up their constitutions and rules, to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action or who seek to persuade fellow members to refuse to participate in such action. The Committee asks the Government to refrain from any interference which would restrict the right of workers' organizations to draw up their constitutions and rules freely.

3. *Immunities in respect of civil liability for strikes and other industrial action (sections 223 and 224 of the 1992 Act).* The Committee recalls that its previous comments concerned the above-mentioned provisions which removed the immunities which existed previously in respect of, among others: (a) the organization of certain forms of "secondary action" (i.e. action by workers having no dispute with their own employer); and (b) the organization of industrial action in support of employees dismissed while taking part in "unofficial" industrial action. In its report, the Government maintains its view that nothing in the Convention requires the law to give special protection against proceedings concerning the organization of industrial action among workers who have no dispute with their own employer. The Government

indicates that there are no relevant reported judgements and concludes that there is no need to amend these provisions.

The Committee draws the Government's attention to paragraph 168 of its 1994 *General Survey on Freedom of Association and Collective Bargaining* where it indicates that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful. The lifting of immunity opens such industrial action to be actionable in tort and therefore would constitute a serious impediment to the workers' right to carry out sympathy strikes. Furthermore, the Committee considers that industrial action for a worker dismissed for "unofficial" industrial action falls into the category of protest strikes the exercise of which should not be excessively limited by unrestricted tort proceedings. Noting the indication made by both the Government and the TUC that court judgements were only one means of assessing the practical impact of a particular piece of legislation (and therefore implicitly assuming that the legislation may in any event have an impact on a union's decision to take the industrial action in question), the Committee requests the Government to consider amending these provisions so as to accord adequate protection of the right of workers' organizations to engage in these legitimate forms of industrial action.

4. *Dismissals in connection with industrial action.* In its previous comment, the Committee, in view of the Government's request and given that some of the issues raised under this heading might be the subject of other instruments, indicated that it would deal with this related issue in its examination of the Government's report under Convention No. 98. In the meantime, it invited the Government and the TUC to provide particulars on the legal and factual situation in this respect. The Committee again notes from the Government's report that it understands questions of dismissal and other disciplinary action taken by an employer against workers who have engaged in industrial action not to be relevant to the guarantees afforded by Convention No. 87. The Government has also supplied a list of relevant court cases and concluded that no further comment on this matter was necessary in the context of the present report. The Committee also notes the detailed information provided by the TUC in its communication of 10 January 1995 concerning the impact of such dismissals upon the application of Convention No. 87. In this regard, the Committee would draw the Government's attention to paragraph 139 of its 1994 *General Survey* in which it notes that sanctions or redress measures are frequently inadequate when strikers are singled out through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal) and that this raises a particularly serious issue in the case of dismissal if workers may only obtain damages and not their reinstatement. In the Committee's view, legislation should provide for genuine protection in this respect, otherwise the right to strike may be devoid of content. The Committee is awaiting both the Government's detailed report under Convention No. 98 as well as the Government's reply to the TUC comments under Convention No. 87 with respect to this matter in order to assess fully the impact of the law and practice with respect to these Conventions.

5. *Detailed regulation of the internal functioning of workers' organizations.* The Committee notes that, since its last substantive examination of the application of this Convention, the Government has adopted yet more detailed regulations concerning the internal functioning of workers' organizations. It has taken due note of the need evoked by the Government in its report to regulate these various matters. It has also noted the comments made by the TUC concerning a number of other provisions in the 1993 Act which it considers to interfere with its rights under Article 3 of the Convention. While the Committee considers that some of the provisions noted by the TUC do not

technically constitute a violation of the Convention (e.g. section 15 of the 1993 Act with respect to check-off facilities or the extension of the notion of "unjustifiable discipline" in section 16 to include when members fail to agree to or withdraw from check-off arrangements, resign from a union and become or propose to become a member of another union, work with non-members, and work for an employer who employs non-members), the continuing regulation of the smallest details of the internal functioning of workers' organizations may reach a point where the cumulative effect of such regulation, by virtue of its detail, complexity and extent, nevertheless constitutes an interference in the rights of such organizations under Article 3 of the Convention.

In this regard, the Committee would draw the Government's attention to paragraph 135 of its 1994 *General Survey* which provides that legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest autonomy is left to the organizations in their functioning and administration.

6. The Committee is raising a number of other points in a request addressed directly to the Government.

Venezuela (ratification: 1982)

The Committee notes the Government's reports and recalls that in its previous comments, it pointed out that:

- the period of residence required (more than ten years) in order for foreign workers to hold trade union office is too long (section 404);
- the list of attributions and purposes required for workers' and employers' organizations is too extensive (sections 408 and 409);
- the number of workers (100) required to form unions of self-employed workers is too high (section 418);
- the number of employers (10) required to form an employers' organization is too high (section 419).

The Committee notes with regret that no steps have been taken to bring the legislation into conformity with the Convention. It therefore repeats its request to the Government to take the necessary measures, in consultation with the social partners, to amend the legislation, to enable organizations to elect their leaders in full freedom, and foreign workers to accede to trade union office after a reasonable period of residence in the country; to allow employers' and workers' organizations to set out in their statutes their attributions and the purposes they wish to pursue, and to reduce the minimum number required to form unions of self-employed workers and employers' organizations.

The Committee again requests the Government to provide information in its next report on any amendment made or envisaged to this end.

Yemen (ratification: 1976)

Referring to its previous comments, the Committee recalls that for several years it has been requesting the Government to expressly amend or repeal the following legislative provisions:

(a) — the prior authorization for the establishment of a trade union or a federation (sections 154 and 158 of the Labour Code of 1970; section 57 of the regulations respecting the model statutes of the General Trade Union of Manual and Non-Manual Employees);

- the inclusion of a single trade union system in the law (sections 129, 138 and 139 of the Labour Code and sections 5(h), 41, 42, 43 and 47(a) of its regulations);
- the high number of workers required to establish trade unions (50 for a trade union or a trade union committee, and 100 for a general trade union) (sections 21, 137, 138 and 139 of the Labour Code and section 55 of its regulations),

which are contrary to *Article 2 of the Convention* which provides that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The Committee also recalls that workers must be able to establish, if they so wish, trade unions outside the existing trade union structure;

(b) — the powers of the public authorities to interfere in: (a) the financial administration of trade unions (sections 132(2) and (4) and 133(13) and (14) of the Labour Code); (b) trade union activities (section 145(2) of the Labour Code and section 34 of its regulations); and (c) the formulation of their constitutions and rules (section 150 of the Labour Code and section 62 of its regulations);

- the prohibition on political activities by trade unions (section 132 of the Labour Code); and
- the denial of the right of foreign workers to hold trade union office (section 142(3) of the Labour Code),

which are contrary to *Article 3* which provides that workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities without interference by the public authorities;

(c) — the restrictions placed on the activities of trade unions to support their claims (section 16 of Ministerial Order No. 42 of 1975 concerning the procedures for the settlement of industrial disputes),

which is contrary to the right of workers and their organizations to organize their activities and formulate their programmes in defence of their economic, social and professional interests, also by calling a strike without interference from the public authorities, in accordance with the principles contained in *Articles 3 and 10*;

(d) — the possibility of the dissolution of a trade union by administrative authority (section 157 of the Labour Code),

which is contrary to *Article 4*, under which workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

The Committee takes due note of the information provided by the Government in its report to the effect that the Unification Agreement concluded between North and South Yemen provides for the application of the most favourable laws and regulations of the two countries, pending the promulgation of unified legislation. As regards labour law, the Government indicates that the new Labour Code will soon be discussed by Parliament (legislative power). Until its promulgation, the Government indicates that the Basic Labour Code (Act No. 14 of 1978) which does not provide for any of the restrictions under the Labour Code of 1970, will apply to all labour matters.

More precisely, with regard to violations of *Article 2* mentioned in the Committee's prior observations, the Government refers to article 39 of the Constitution of Yemen and section 93 of the Basic Labour Code (Act No. 14 of 1978) which guarantee to workers the right to establish and join organizations of their own choosing without having to obtain prior authorization, in accordance with the rules and regulations decided and set by these organizations, which are not subject to registration by any state authority.

As regards violations of *Article 3*, the Government declares that the establishment and subsequent operation of trade unions are not subject to any financial or administrative supervision of the public authorities. Financial supervision of trade unions, if any, is practised by the General Confederation of Trade Unions and by the general meetings of trade unions.

Finally, as regards the restrictions placed on the activities of trade unions, the Government refers amongst others, to section 93(c) of the Basic Labour Code that provides that the Federation of Trade Unions is entitled to call a strike in accordance with its own regulations and decisions. The Committee would like to recall that the right to strike is one of the essential means that should be available to workers and their organizations *at all levels* for the promotion and protection of their economic and social interests and that any limitations on the right to strike should be confined to public servants exercising authority in the name of the State or to essential services in the strict sense of the term, that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The Committee expresses once again the firm hope that the Government will be able to supply information in its next report on the measures which have been taken expressly to repeal or amend the legal provisions contrary to the requirements of the Convention and to bring them into conformity with the principles of freedom of association and, in particular, through the adoption of the new Labour Code.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Australia, Austria, Bangladesh, Belize, Benin, Bolivia, Bulgaria, Burkina Faso, Canada, Chad, Colombia, Congo, Côte d'Ivoire, Croatia, Djibouti, Dominica, Dominican Republic, Ecuador, Ethiopia, Guinea, Jamaica, Madagascar, Mexico, Panama, Peru, Poland, Portugal, Romania, Russian Federation, Saint Lucia, Seychelles, Swaziland, United Kingdom.*

Information supplied by *Hungary, Ireland, Mauritania* and *Senegal* in answer to direct requests has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Argentina (ratification: 1956)

Articles 4 and 5 of the Convention. The Committee takes note of the Government's reply to its earlier comments. It notes, in particular, the provision of section 132 of the new National Employment Law No. 24.013 of 13 November 1991, according to which the Ministry of Labour and Social Security shall endeavour to integrate to the Network of Employment Services the employers', workers' and other organizations which are not conducted with a view to profit. The Committee would be grateful if the Government would indicate in its next report, whether any measures are taken or envisaged to establish one or more national advisory committees and, where necessary, regional and local committees, and whether any arrangements have been made through such committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy, as required by these Articles. Please also indicate whether the representatives of employers and workers on these committees are appointed in equal numbers after consultation with representative organizations of employers and workers, in conformity with Article 4, paragraph 3.

More generally, the Committee further requests the Government to supply information on the measures taken to give practical effect to sections 130 to 132 of the new Employment Law, in relation to the other provisions of the Convention. Please give a general appreciation of the manner in which the Convention is applied and furnish statistical information on the operation of provincial employment services.

Bolivia (ratification: 1977)

With reference to its earlier comments, the Committee notes the information supplied by the Government in its report, and in particular, the compilation of texts governing the status of public officials, including Decree No. 11049 of 1973 requested under *Article 9 of the Convention*.

Articles 1-5. The Government states in its report that the intention to establish an overall employment service in the form set out in these Articles, as indicated in its earlier report, has not yet been put into practice. The Government indicates that the main reasons for it are the lack of resources and the policy of stabilization and structural adjustment of the economy. It further states, nevertheless, that a possibility to create such an employment service could appear as a result of measures aiming at the political, economic and social stability, and due to the restructuring at the governmental level. The Committee therefore reiterates its hope that the Government will be able to supply in its next report, information on the extent to which effect has been given to the above Articles of the Convention, with particular emphasis on the creation of a network of local and, where appropriate, regional offices, as well as the arrangements made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of the employment service policy.

Articles 6, 7 and 8. The Committee notes the Government's indications concerning the activities of the Employment Promotion Department of the Ministry of Labour aimed at the promotion of the employment and placement of workers. It asks the Government to continue to supply information on efforts being made to expand the functions of employment service, indicating, in particular, measures taken to facilitate specialization by occupations and by industries and to meet adequately the needs of particular categories of applicants for employment, such as disabled persons and juveniles, in accordance with these Articles. Please also furnish statistical information on the number of applications of employment received, the number of vacancies notified and the number of persons placed in employment, as required under *Part IV of the report form*.

Costa Rica (ratification: 1960)

The Committee notes the information supplied by the Government in its report concerning the development of the national system of public employment offices and measures taken to meet the needs of particular categories of applicants for employment, such as disabled persons. As regards statistical information, the Government indicates that such information is in the process of being compiled and that the relevant statistical tables are under preparation. The Committee therefore hopes that the Government will not fail to provide, with its next report, the statistical information available concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified, and the number of persons placed in employment by such offices, as requested by *point IV of the report form*.

Articles 4 and 5 of the Convention. The Government refers in its report to the establishment, under the auspices of the National Vocational Training Institute, of Liaison Committees which could allow the participation of representatives of employers, workers and public institutions in the definition and application of measures concerning vocational training and employment. The Committee would be grateful if the Government would describe in more detail the functions of these committees and their structure, indicating, in particular, whether representatives of employers and workers on these committees cooperate in the organization and operation of the employment service and in the development of employment service policy, and whether the representatives of employers and workers are appointed in equal numbers after consultation with representative organizations of employers and workers, as required by these Articles of the Convention. Please also indicate the number of such committees established nationally and, if applicable, regionally and locally.

Djibouti (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in reply to its previous comments, but also notes that many of the Articles of the Convention are still not being applied.
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> *Article 3 of the Convention*. The Government states once again that no measure has been taken to set up a sufficient number of employment offices, despite the provisions of section 41 of Act No. 21/AN/83 first L of 3 February 1983 to organize the central administration of the Ministry of Labour and Social Welfare. The Committee notes that no progress has been achieved in this respect for several years and once again hopes that the appropriate measures will be taken in the near future to give effect to this Article of the Convention, and to the above provisions of the national legislation. It requests the Government to supply information on any progress achieved in this respect in its next report.
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> *Articles 4 and 5*. In its previous comments, the Committee noted that no arrangements had been made through the advisory committee provided for in section 162 of the Labour Code currently in force to involve the social partners in the organization and operation of the National Employment Service. The Government's report provides no new information on this aspect. The Committee therefore once again hopes that the Government will not fail to take the necessary steps in the very near future to give full effect to these Articles, which provide that suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and consultation with these representatives in the development of employment service policy. The Committee trusts that the Government will be able to describe in its next report the measures which have been taken or are envisaged and the progress which has been achieved with a view to ensuring conformity with these provisions of the Convention.
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> *Articles 7 and 8*. In its previous report, the Government stated that no measures had been taken to give effect to these Articles owing to the lack of qualified managerial staff in the placement division. The Committee nevertheless hoped that the Government would do its utmost to take appropriate measures in the very near future to meet the needs of particular categories of applicants for employment, such as persons with disabilities and juveniles, in

accordance with these Articles. It hopes that the Government will be able to describe the progress achieved on these points in its next report.

Article 9, paragraph 4. The Committee notes from the Government's report that the project for the specialized training of managerial staff, financed by the EC and the World Bank, has come to an end. It would be grateful if the Government would indicate any action taken to continue the provision for adequate training of staff for the performance of their duties in the employment service, in accordance with these provisions of the Convention.

Point VI of the report form. The Committee would be grateful if the Government would continue to supply information on any practical difficulties encountered in the implementation of the Act of 1983 and in the application of the Convention. The Government may find it helpful to have some assistance from the ILO on certain aspects of the application of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Dominican Republic (ratification: 1953)

With reference to its previous comments, the Committee takes note of the information provided by the Government in its report.

Articles 4 and 5 of the Convention. The Government states that the National Employment Commission still remains inoperative and that no measures have been adopted in order to assure its functioning. In its previous reports the Government referred to measures contemplated with a view to achieving the technical and institutional reinforcement of the above-mentioned Commission, and in particular to the document of the State Secretariat for Labour concerning the subject. The Committee trusts that the Government will not fail to adopt practical measures, in the very near future, to ensure the operation of the National Employment Commission, in order to give effect to these Articles of the Convention, which provide for the arrangements that shall be made through the advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy. It asks the Government to provide, in its next report, information on any progress made in this regard.

Articles 6 and 7. The Government indicates once again that the General Directorate of Employment and Human Resources of the State Secretariat for Labour, responsible for organizing a free public employment service, still plays a modest role on the Dominican labour market. It also states that the project entitled "National Employment Plan 1988-90", to which reference was made in the report received in 1989, has not been put into practice due to the lack of financial resources. In its report of 1990 the Government indicated that no adequate measures had been taken over the past few years in order to satisfactorily apply the provisions of these Articles. In this situation the Committee can but reiterate its hope that the Government will adopt appropriate measures, in the very near future, in order to improve the application of the provisions of *paragraphs (c) and (e)* of Article 6 (concerning the functions of the employment service) and of Article 7 (concerning measures to facilitate within the various employment offices specialization by occupations and by industries and to meet adequately the needs of particular categories of applicants for employment, such as disabled persons).

Article 9. The Committee notes the adoption of the Law on the Civil and Administrative Service No. 14/91, of 20 May 1991, according to which public servants are assured of stability of employment. The Committee notes, however, the provision of section 3, paragraph 1, of the above-mentioned Law, according to which the scope of the law is going to be extended gradually to cover various executive public bodies, in accordance with the order established by the President of the Republic. The Government indicates in this connection that the staff of the State Secretariat for Labour is not yet covered by the provisions of this Law. The Committee hopes that the scope of Law No. 14/91 will be extended in the near future in such a way as to cover the employment service staff, in order to give effect to this Article of the Convention, and asks the Government to provide, in its next report, information on any progress achieved in this regard.

Point IV of the report form. The Committee would be grateful if the Government would continue to provide statistical information on the results of the operation of the public employment service, as required by the report form.

Egypt (ratification: 1954)

Articles 4 and 5 of the Convention. (Establishment of advisory committees.) The Committee notes from the Government's reply to its earlier comments that Decision No. 795 of 1979 of the President of the Republic which established the Central Council for Manpower and Training was repealed by Decision No. 459 of 1982 of the President of the Republic and the above-mentioned Council is replaced by the establishment of the Central Council for Human Resources Development and Training. The Government indicates that this body is responsible for the elaboration of the national policy in the field of planning and development of human resources and gives a list of its specific functions. The Committee would be grateful if the Government would state clearly in its next report whether this body is also empowered to cooperate in the organization and operation of the employment service and in the development of the employment service policy. Please also describe the composition of this body.

As regards sections 76 and 79 of Act No. 137 of 1981, to which reference is made once again in the Government's report, the Committee asks the Government to indicate whether any measures have been adopted or envisaged with a view to establish in practice a Central Advisory Labour Council (section 76) and advisory employment committees at various geographical and sectoral levels (section 79), in order to give effect to the above-mentioned Articles of the Convention.

India (ratification: 1959)

Article 10 of the Convention. In its previous comments, the Committee asked the Government to give particulars, when appropriate, concerning qualitative improvements in the services offered by the employment exchanges as a result of their modernization, in relation to the role of the tripartite committees on employment in promoting the use of employment exchanges by the private sector. The Government indicates that, though efforts are being made to modernize and upgrade the employment exchange operations with a view to providing qualitatively better services to the jobseekers as well as the employers, it is too early to indicate qualitative improvements in the services available to the private sector. It also states that it is proposed to undertake a research study to find out the impact of computerization.

As noted previously, it was expected that qualitative improvements in the services offered by the employment exchanges would result in a substantial increase in the voluntary utilization of the employment service. However, statistical information supplied by the Government shows a downward trend in the performance of the employment exchanges over the period covered by the two last reports, and even more marked since the time of the "Mathew Report".

The Committee would be grateful if the Government would continue to supply, in its future reports, information on any developments and progress in these spheres, indicating in particular the arrangements made in cooperation with employers' and workers' organizations to encourage full voluntary use of employment service facilities.

Peru (ratification: 1962)

With reference to its previous comments, the Committee notes the information provided by the Government in its report concerning the cooperation of the National Directorate of Employment and Vocational Training of the Ministry of Labour with the Higher Institute of Administrative and Economic Sciences and the National Vocational Training Service for the Construction Industry.

Articles 4 and 5 of the Convention. Over a number of years the Committee has been making comments on the application of these Articles which provide for the establishment of advisory committees through which suitable arrangements should be made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy. It observes that no progress has been made in the application of these Articles and that the Government's report contains no new information on the subject. The Committee therefore urges the Government to take appropriate measures in the near future in order to give effect to the Convention on this point and to provide, in its next report, information on any progress made in this regard.

[The Government is asked to report in detail in 1996.]

Philippines (ratification: 1953)

With reference to its earlier comments, the Committee notes the information provided by the Government in its report. It notes in particular the detailed information on the implementation of the Public Employment Service Offices (PESOs) Programme at the central, regional and local levels, and on the practical functioning of PESOs, including statistics.

Articles 4 and 5 of the Convention. The Government indicates that the PESOs are run by local government units and a number of non-government organizations. It also refers to various tripartite councils at the regional and national levels which provide advisory services to local government units and other government agencies. The Government states, however, that no advisory committees provided for in these Articles have been created in the country. The Committee therefore urges the Government to adopt appropriate measures in order to give effect to the provisions of *Article 4, paragraphs 1, 2 and 3*, according to which (*paragraph 1*) "suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy"; (*paragraph 2*) "these arrangements shall provide for one or more national advisory committees and where necessary for regional and local committees"; (*paragraph 3*) "the representatives of employers and workers on these committees shall be appointed in equal numbers after consultation with representative organizations of employers and workers". The Committee also urges adoption of appropriate measures to give effect to the provisions of *Article 5* which stipulates that "the general policy of the employment service in regard to referral of workers to available employment shall be developed after consultation of representatives of employers and workers through the advisory committees provided for in Article 4".

The Committee trusts that such measures will be adopted by the Government in the very near future and asks the Government to provide, in its next report, information on any progress made in this regard.

[The Government is asked to report in detail in 1996.]

Sierra Leone (ratification: 1961)

1. The Committee notes the Government's intention expressed in the report, in reply to its previous comments, to forward to the ILO its proposals for technical cooperation in order to improve the implementation of the Convention.

2. The Committee recalls its previous observation which read as follows:

> With reference to its earlier comments, the Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.
>
> The Committee reiterates its hope that the new provisions will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, including the use of ILO technical cooperation.

[The Government is asked to report in detail in 1996.]

United Republic of Tanzania (ratification: 1962)

Tanganyika

The Committee notes the information provided by the Government in reply to the Committee's earlier observations. The Government indicates that the project document elaborated with the technical assistance of the ILO, concerning the establishment of employment promotion offices (EPOs), which would perform the role of the former employment exchanges, has not been implemented due to the lack of financial resources. The Government also states that specialization by occupation and by industries is not currently given emphasis for the same reason. In its previous report received in October 1993, the Government informed of its intention to open the EPOs in three regions of the country. The Committee hopes that the project concerning the establishment of EPOs will be put into practice in the near future and asks the Government to keep it informed of any progress made in this regard. The Committee trusts that the Government will not fail to supply, in its next report, information on measures taken in this connection with a view to ensuring full application of *Article 6* (Employment service's functions) and *Article 7* (Measures to facilitate within the various employment offices specialization by occupation and by industries, and to meet the needs of particular categories of applicants, such as disabled persons) *of the Convention*.

The Committee in its previous comments noted from the Government's report received in October 1993 the information concerning action taken as a result of preparation of various youth programmes and consultancy services. The Committee asked the Government to continue to describe the developments in this field and, more particularly, special arrangements for juveniles made within the framework of the employment and vocational guidance services, in accordance with *Article 8*. It observes that the Government's report contains no information on this point. The Committee hopes that the information requested will be supplied by the Government in its next report in order to enable the Committee to assess the application of this Article.

While noting the Government's statement in the report concerning difficulties in providing statistical information, the Committee reiterates its hope that such information will be supplied as soon as it becomes available, in accordance with *point IV of the report form* .

[The Government is asked to report in detail in 1996.]

Zaire (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in reply to its previous comments.
>
> *Article 3 of the Convention*. The Committee notes with interest that the Department of Employment and Social Insurance is progressively continuing to establish employment offices in the regions, and that three employment offices have been opened respectively in Kinshasa, Lubumbashi and Kisangani. It also notes the Government's statement that this programme is being continued in the eight other regions of the country. The Committee hopes that in the near future the Government will be able to report that new progress has been achieved in the development of a network of employment offices, in accordance with this Article of the Convention.
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> *Articles 4 and 5*. The Committee notes that the draft ordinance, establishing the new National Employment Service, was submitted for examination by the Executive Council and that representatives of employers and workers took an active part in all the discussions on the organization and discussion of the National Employment Service at the 21st Session of the National Employment Council. The Committee hopes that the Government will supply additional information in its next report in order to give fuller details on the arrangements that have been made, in accordance with these provisions of the Convention, for the cooperation of representatives of employers and workers in the organization and operation of the employment service and the development of the policy of this service.
>
> *Application in practice and other information required by the report form*. The Committee notes the Government's concern to improve the collection of statistics related to the application of the Convention. It hopes that the Government will be able to furnish in due time, the statistical information that has been published (particularly concerning the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment), and any relevant general appreciation of the manner in which the Convention is applied, in accordance with *points IV and VI of the report form*. Please also supply the ILO with the text of the above ordinance once it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Belize, Colombia, Czech Republic, Denmark, Ecuador, Guinea-Bissau, Libyan Arab Jamahiriya, Mozambique, Netherlands, Sao Tome and Principe, Spain, Tunisia, Turkey, Venezuela*.

Convention No. 89: Night Work (Women) (Revised), 1948 [and Protocol, 1990]

Austria (ratification: 1950)

The Committee notes the comments transmitted by the Federal Chamber of Labour concerning the application of the Convention in the context of Austria's adhesion to the European Union, which it is examining in greater detail in a request addressed directly to the Government.

Costa Rica (ratification: 1960)

The Committee notes the comments made by the Trade Union Association of Customs Officials (ASEPA) on the application of the Convention.

In its comments, the ASEPA states that, by virtue of Executive Decree No. 23116-MP, published in *La Gaceta* No. 76 of 21 April 1994, provisions were adopted which contravene the terms of labour law and ratified Conventions, including Convention No. 89. The ASEPA also states that the appeal against Executive Decree No. 23116-MP, which violates ratified Conventions, including Convention No. 89, was rejected by the Constitutional Court on its substance, without considering its implications.

The Committee trusts that the Government will supply detailed comments on this information, which was transmitted by letter dated 17 January 1995.

Czech Republic (ratification: 1993)

The Committee notes the information supplied by the Government in its report for the period ending 30 June 1993.

The Committee notes the Government's statement that the prohibition of night work of women constitutes, in the present economic situation in the country, a significant obstacle for employment of women since certain jobs, where night work is required for operational reasons, can be performed by both men and women, without meaningful prejudice to the latter's health, and prohibition tends to be interpreted rather as discrimination against women. The Committee also notes from the same report that for these reasons the Government is considering the amendment of section 152 of the Labour Code to the effect that its provision would be deleted and thus the prohibition of night work of women will be abolished in accordance with the spirit of Convention No. 171.

The Committee also notes that under section 97 of Act No. 74/1994 of 23 March 1994, amending the Labour Code, section 152 of the Labour Code which prohibited night work by women was repealed. The Committee also notes the Constitutional Court's decision of 23 November 1994 dismissing the appeal lodged by a group of 45 parliamentarians who sought the cancellation in particular of section 97 of Act No. 74/1994.

The Committee notes that effect is no longer given in law to the provisions of the Convention and its Protocol. It recalls paragraph 142 of its *General Survey* of 1988 on equality in employment and occupation in which it points out that eliminating the protection afforded to women by the ban on night work in industrial enterprises cannot be deemed the only measure necessary in order to promote equality of opportunity and treatment in employment and occupation. Other measures can be adopted to satisfy the requirements of the promotion of equality which should not be sought at the expense of a degradation of working conditions, and much less be based on such a degradation.

The Committee asks the Government to indicate the measures taken to ensure compliance, both in law and in practice, with the provisions of the Convention and the Protocol of 1990.

Ghana (ratification: 1965)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 4(a) of the Convention.* The Committee referred to its previous comments which it has reiterated for several years concerning the need to amend section 41(2)(a) of the Labour Decree of 1967 which, contrary to the Convention, permits the suspension of the prohibition of night work by women when work is interrupted by reason of a strike. The Committee noted that the necessary steps have still not been taken to bring the legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Kuwait (ratification: 1971)

The Committee notes the information supplied by the Government in its report.

Article 1, paragraph 1 of the Convention. In the comments it has been making for many years, the Committee has pointed out the need to extend the application of the Convention to certain categories of workers who are excluded from the Labour Law (private sector) of 1994 (i.e. workers in enterprises operating without recourse to power and employing less than five people, and casual and temporary workers engaged for less than six months). It noted that the Bill to amend Law No. 38 of 1964 which is currently in force, is intended to include the categories of workers excluded from the above Law. The Committee notes the Government's statement that it will provide a copy of the Labour Code for the private sector as soon as it has been adopted officially. It hopes that the necessary amendments will be made to the Labour Code (private sector) to give effect to the provisions of the Convention.

Panama (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee noted that the Government states once again that it is examining the possibility of denouncing the Convention for economic and social reasons. It noted the Government's statement in its report that, in view of the other priorities in social affairs, consultations with the organizations of employers and workers on this matter have not yet taken place.
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> The Committee recalls that, since the ratification of the instrument in 1970, the Government has not indicated in its reports that any measure has been taken or is envisaged to bring the law or practice into conformity with the Convention in respect of prohibiting the night work of women employed in industry.
>
> The Committee requests the Government to indicate the measures which have been taken to bring national law and practice into conformity with the international commitments which have been undertaken.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Zambia (ratification: 1965)

The Committee notes the Government's report in which it states that the Employment of Women, Young Persons and Children Act No. 14 of 1989, Cap. 505 of the Laws of Zambia has been amended by Act No. 4 of 1991 under which the provision barring women from night work in industrial undertakings has been repealed. It also notes that according to the Government's report the repeal of the above-mentioned provision has removed from the legislation any traces tending to discriminate against women in the field of employment and to assure, on the basis of equality, the same rights and treatment for men and women. Furthermore, the Committee notes the Government's statement that it will in due course have to decide whether or not it wishes to continue to be bound by this Convention.

The Committee recalls the observation in paragraph 142 of its 1988 *General Survey on Equality in Employment and Occupation* when it pointed out that eliminating the protection afforded to women by the ban of night work in industrial enterprises cannot be deemed the only measure necessary in order to promote equality of opportunity and treatment in employment and occupation. Other measures can be taken to satisfy the requirements of the promotion of equality.

The Committee is bound to note that the Convention is no longer being applied. It hopes that the Government would therefore be able to re-examine the situation in the light of its obligation arising from its ratification of the Convention. The Committee requests the Government to keep it informed of any measures taken in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Austria, India*.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Costa Rica (ratification: 1960)

The Committee notes the comments of the Trade Union Association of Public Customs Employees (ASEPA) on the application of the Convention.

In its comments, the ASEPA indicates that under Executive Decree No. 23116-MP published in "La Gaceta" No. 76 of 21 April 1994, provisions were adopted which contravene the terms of labour standards and ratified Conventions, including Convention No. 90. The ASEPA also indicates that the Constitutional Court dismissed the appeal against Executive Decree No. 23116-MP which is in breach of ratified Conventions, including Convention No. 90, on its substance without considering its implications.

The Committee trusts that the Government will send detailed comments on the above information.

India (ratification: 1950)

The Committee has for many years been noting that section 70(1A) of the Factories Act, 1948, as amended in 1987, prohibits the night work of adolescents under 17 years of age between 7 p.m. and 6 a.m., i.e. for a period of 11 consecutive hours. It asked the Government to indicate the measures taken to bring the Act into conformity with *Article 2, paragraph 1, of the Convention*, in which the term "night" signifies a period of at least 12 consecutive hours.

The Government states in its report that it takes note of the point made by the Committee and that it is examining the possibility of amending the Act to bring it into harmony with the Convention.

The Committee asks the Government to indicate the measures taken to bring the Factories Act, 1948, into line with Article 2, paragraph 1, of the Convention.

Exceptions: Article 3, paragraph 2, Article 4, paragraph 2, and Article 5. The Committee noted that, under section 70(1A) of the Factory Act, 1948, state governments may vary the prescribed time-limits and authorize exemptions in cases of emergency where the national interest so demands. It asked the Government to indicate the measures taken to bring the legislation into conformity with *Article 3, paragraph 2* (referrable to young people of over 15 years in the case of apprenticeships or vocational training in enterprises where work has to be carried on continuously), *Article 4, paragraph 2* (referrable to young persons of over 15 years in the case of emergencies which interfere with the normal working of the undertaking) and *Article 5* (referrable to children of over 15 years in exceptional circumstances where the public interest demands it) on this point.

In its report the Government states that according to information furnished by the state governments, the provisions relating to variations of the prescribed time-limits and grant of exemptions relating to night work have not been made use of in the case of children.

The Committee asks the Government to indicate the measures taken or contemplated to bring the legislation into conformity with national practice and with the Convention on this point.

Mexico (ratification: 1956)

The Committee recalls that it has been commenting on the question of delimiting the night period ever since the ratification of the Convention. It has drawn attention to section 68 of the 1931 Federal Labour Act, the substance of which was the same as section 60 of the 1969 Federal Labour Act.

In the comments it has been making since 1972, the Committee has noted that under section 60 of the 1969 Federal Labour Act, work carried out between 8 p.m. and 6 a.m. shall be deemed to be night work. The term "night" used in this provision accordingly refers to a period of ten consecutive hours. The Committee recalled that, under *Article 2, paragraph 1, of the Convention*, the term "night" signifies a period of at least 12 consecutive hours. It asked the Government to indicate the measures taken to remove this major discrepancy between the national legislation and the Convention.

The Government has consistently stated that the legislation is not at variance with the Convention on this point. However, until 1990, it indicated in its reports that a Bill was to be considered by the competent authorities, which would define night work for young people under the age of 18 as a period of 12 consecutive hours. The text of the Bill was sent by the Government in 1975. In its report for 1993 the Government indicated that it was not planning to review the Federal Labour Act in the short term. It stated that if section 60 of the Federal Labour Act was not consistent with Article 2 of the Convention, the provision of the Convention would prevail over that of the national law pursuant to article 133 of the Constitution which gives legal precedence to a ratified international treaty over domestic law.

The Committee recalls that Article 2 of the Convention fixes not working time but a period of 12 hours, at "night", during which work by young people of under 18 years of age is prohibited. The 12-hour period comprises intervals, which vary according to age, for the authorized exceptions to the principle that night work by children and young people of under 18 years is prohibited. The Committee again recalls that section 60 of the Federal Labour Act, by specifying that work done between 8 p.m. and 6 a.m. shall be deemed to be night work, lays down a period of ten hours. By thus establishing a period termed "night" as a period of ten hours, section 60 of the Federal Labour Act is inconsistent with Article 2, paragraph 1, of the Convention which requires this period to be 12 hours long.

The Committee again asks the Government to take the necessary measures to bring the Federal Labour Act into conformity with the Convention on this point. In view of the fact that this situation has prevailed over a considerable period of time, the Committee suggests that the Government might wish to make use of the technical assistance of the International Labour Office to resolve the matter.

Saudi Arabia (ratification: 1978)

In its previous comments, the Committee pointed out that section 167 of the Labour Code, which sets a night period of 11 consecutive hours during which children and young persons are prohibited from working, was not in conformity with *Article 2 of the Convention*, which provides for a period of at least 12 consecutive hours. It notes from the Government's report that no changes have been introduced concerning the measures taken to give effect to the provisions of the Convention. The Committee again expresses the hope that the Government will do everything in its power to take, in the near future, the necessary measures to bring the law into harmony with the Convention. It asks the Government to indicate any progress made in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Lebanon, Pakistan*.

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

Brazil (ratification: 1965)

Article 3, paragraph 2, and Article 7 of the Convention. In its previous observations, the Committee noted that section 147 of the Consolidated Labour Laws (CLL) grants the right to compensation for a proportionate fraction of annual holiday to workers discharged without due cause or whose contract terminates on the due date before 12 months of service is completed. The Committee pointed out that section 147 is not in conformity with Article 3, paragraph 2, and Article 7 of the Convention, in the case of seafarers who complete between six and 12 months of continuous service and who terminate their contracts on their own initiative or are discharged. The Committee also had pointed out that section 146 of the CLL provides that where a contract ends after 12 months of service, a worker is entitled to compensation proportionate to the unutilized leave only when discharged without due cause. In this regard, the Committee observed that section 146 is not in conformity with Article 3, paragraph 3, and Article 7, under which any seafarer should be entitled to a proportionate holiday and the related remuneration at the end of not less than six months' continuous service, regardless of the reason for termination.

In reply to these previous observations, the Government refers to Article 7, clause XVII of the 1988 Brazilian Constitution, which states that urban and rural workers are entitled to the enjoyment of annual paid vacation with at least one-third more than normal salary. The Government indicates that this constitutional provision repeals all other similar legislation relating to annual paid vacation. The Committee must point out that, so far as the Constitution does not give effect to the precise provisions of the Convention and, more generally, to avoid any uncertainty regarding the state of the law, the surest solution is to bring the national legislation, the Consolidated Labour Laws in particular, explicitly into harmony with the provisions of the Convention. It therefore hopes that the Government will take the necessary measures to ensure the right to a proportionate annual leave with the corresponding remuneration for a seafarer leaving the service or discharged after not less than six months of continuous service, in accordance with Article 3, paragraph 2, and Article 7 of the Convention.

Article 4, paragraph 1. In its previous observations, the Committee noted that section 136 of the CLL provides that annual holiday shall be granted at the period most suitable to the employer. In this respect, the Committee recalled that under Article 4 of the Convention, annual vacation holiday should be given by mutual agreement at the first opportunity as the requirements of the service allow. In reply to this observation, the Government has once again indicated that the CLL is to be revised so that leave is taken in accordance with the Convention. In this connection, the Committee trusts the Government will take the necessary measures to specify that when an annual vacation holiday is due, it shall be given by mutual agreement at the first opportunity as the requirements of the service allow, so that Article 4, paragraph 1, of the Convention is fully applied.

The Committee hopes that the annual leave provisions of the CLL (sections 136, 146 and 147, in particular) will soon be amended in order to give full effect to the provisions of the Convention. It requests the Government to keep it informed of any progress achieved in this respect and to supply a copy of the relevant text when it is adopted.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Guinea-Bissau, Tunisia.*

Convention No. 92: Accommodation of Crews (Revised), 1949

Algeria (ratification: 1962)

The Committee notes the information contained in the Government's report. It once again hopes that the necessary measures will be taken to adopt laws or regulations in the very near future to give effect to *Articles 6 to 17 of the Convention*, as provided in *Article 3, paragraph 1.*

Point V of the report form. The Committee hopes that in future the Government will be in a position to supply reports containing specific information on the application of the provisions of the Convention and concerning the inspections made when a ship is registered or re-registered, when the crew accommodation of a ship has been substantially altered or reconstructed or when a complaint has been made by the members of the crew to the competent authority, as provided in *Article 5.*

Italy (ratification: 1981)

Further to its previous comments the Committee notes the Government's statement that draft legislation, including technical regulations, has been sent to the ministries concerned for their opinion. It notes that the Government has been referring to this draft legislation since 1983. It hopes that it will be in a position to indicate in its next report that the above legislation has been adopted and to provide a copy of it.

Article 4 of the Convention. In its previous observation the Committee noted that, according to the Italian Federation of Transport Workers CGIL (FILT/CGIL), the current legislation, and particularly Act No. 1045 of 1939, did not apply to the ships concerned and that the Ministry of the Merchant Navy, which is the competent authority to approve plans for the accommodation of crews, was not able to examine the plans. The Committee again asks the Government to comment on this matter.

The Committee requests the Government once again to provide detailed information on the application of the Convention in accordance with the report form approved by the Governing Body.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in reply to its previous comments. It notes from the report on the application of Convention No. 73 that the Legislative Assembly has approved in plenary the Bill regulating work at sea and on waterways which was to ensure, to some extent, the application of *Articles 6, paragraph 8* (fire-prevention measures), *Article 7, paragraph 4* (ventilation of ships engaged outside the tropics), *Article 9, paragraph 3* (additional lighting), *Article 10, paragraphs 4, 5, 6, 8, and 9* (sleeping rooms), *Article 11, paragraphs 1, 2, 3, and 4* (mess rooms), and *Article 13, paragraphs 1, 2, 3, 4 and 5* (sanitary accommodation) *of the Convention*. It also notes that the above Bill contains provisions on inspection to ensure the application of the Maritime Labour Act and laws and regulations on the working conditions of crews, including those that apply the Convention. The Committee would be grateful if the Government would provide a copy of the final version of the above-mentioned Bill as adopted.
>
> *Point V of the report form.* The Committee notes the information on the functioning of the inspection system to the effect that it has been strengthened in recent years and that 29 national and international companies are now authorized by the General Directorate for Consular and Shipping Affairs to issue technical certificates proving that the inspection required by the Convention has been carried out. The Committee also notes the statistical information for 1989-1991 provided with the report. It would be grateful if the Government would provide updated statistics as soon as it receives them from the Maritime Safety Office (SEGMAR) in New York.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail for 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Egypt, United Kingdom.*

Convention No. 94: Labour Clauses (Public Contracts), 1949

Austria (ratification: 1951)

1. Further to its previous observation, regarding the comments made by the Austrian Congress of Chambers of Labour, the Committee notes the information supplied by the Government which refers to two cases (both concerning Lower Austria Autobahn Agency in 1992), in which point 4.50 of the rules concerning the adjudications for the order of public workers was applied: in the first case, the lowest bidding company, which had been suspected and partially convicted of the violation of some labour laws, was dropped pursuant to the said provision; in the second case, the offer of a consortium including the same company was similarly dropped.

2. The Committee also notes the new Federal Act on the Award of Contracts (B Verg G) BGBI No. 462/1993. The Act provides in section 22 paragraphs 9 and 10 that, in respect of public contract-placing authorities as defined under its section 6, the tender documents must include provisions concerning compliance with the obligations arising out of ILO Conventions Nos. 94, 95 and 98 and that the tenderer must, in making the bid, commit himself to observing those provisions in the implementation of the contract. The Committee requests the Government to indicate whether the above-mentioned rules concerning the adjudications and other statutes that it has so far noted as regards the application of this Convention are still in force under the new Federal Act and, if not, to provide the new texts that replace them. It also asks the Government to continue to supply information on the enactment of similar acts by *Laender* authorities.

3. The Committee notes that the Government's report also includes the comments of the Federal Chamber of Labour, which, while welcoming the enactment of the new Act, points out that: (i) the criteria established for employer conduct in connection with the award of public contracts are too narrow (only illegal employment of foreigners, non-payment of taxes and other levies and failure to meet levels of pay set out in collective agreements are penalized, but *not* the violation of other labour law provisions, such as the right to vacation); and (ii) mandatory penalties are laid down only for repeated violations of regulations governing the employment of foreigners, while for the other offences, the contract-placing authorities are granted a broad discretion on the award of contracts. The Committee asks the Government to provide its observations in respect of these points, as well as information on the application in practice of the new Act.

Brazil (ratification: 1965)

Further to its previous observations, the Committee notes the information supplied by the Government in its report, including the information on the temporary contract of exceptional public interest. It notes in particular the Government's reference to section 44, paragraph 3, of Act No. 8666 of 21 June 1993, which sets out standards on public administration tenders and contracts. Under this provision, a proposal of contract can be accepted only if the overall or partial sums it contains are compatible with the prices of inputs and market wages. The Committee also notes the attached text of Decree No. 1054 of 7 February 1994, which regulates the readjustment of prices in contracts with the federal Government which, in particular in section 4, requires the proposal to present prices consistent with those prevailing in the market.

The Committee would point out that the aim of *Article 2, paragraphs 1 and 2, of the Convention* is to ensure that the workers concerned enjoy wages and other labour conditions not less favourable than those normally observed for the similar kind of work in the district.

The question therefore relates not only to the wages but also to other conditions of work such as hours of work and holidays. The Convention requires, for this purpose, the insertion of appropriate labour clauses in public contracts.

In this connection, the Committee notes with interest the Government's indication that the Secretariat for the Federal Administration (SAF/PR) is currently in the process of producing Administrative Orders and model contracts, where the Committee's concern is taken into account. It would draw the Government's attention to *Article 2, paragraph 3, of the Convention*, under which the competent authority should determine the terms of the labour clauses to be included in public contracts in the manner considered most appropriate to the national conditions, after consultation with the employers' and workers' organizations concerned.

The Committee requests the Government to provide information on progress made as regards these Administrative Orders and model contracts, as well as information on the application of the Convention in practice, including for instance, extracts from official reports, showing the manner in which the above-mentioned section 44, paragraph 3, of Act No. 8666 of 1993 is applied in concrete cases, in accordance with *point V of the report form*.

Cameroon (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee takes note of the information contained in the Government's last report to the effect that it would adopt the necessary measures to bring the legislation into conformity with the provisions of the Convention.
>
> The Committee recalls that it suggested that the Government consider the possibility of requesting ILO assistance to adopt the necessary legislation to apply the Convention. The Committee asks the Government to continue to indicate the measures taken in this respect and hopes that the legislation necessary to apply the Convention will be adopted in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Central African Republic (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted the information supplied by the Government in its most recent report to the effect that a supplement to Decrees Nos. 61/135 and 61/137 of 19 August 1961 was currently under study in order to take into account the Committee's suggestions. Noting that the Government has been mentioning such intention since 1982, the Committee hopes that the Government will be able to adopt these regulations in the very near future. In this connection, the Committee recalls that in accordance with the provisions of *Article 2, paragraph 1, of the Convention*, the contracts to which the Convention applies shall include clauses guaranteeing to the workers concerned working conditions, and not only wages, which are not less favourable than those established for work of the same character in the trade or industry concerned in the same district.

> With regard to the national collective agreement for public works and construction, the Committee would be grateful if the Government would send a copy of this agreement with its next report, since the copy referred to in its earlier report has not arrived.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Egypt (ratification: 1960)

Further to its previous observation, the Committee notes the Government's repeated reference to section 57 of the Labour Code (Act No. 137 of 1981) for the application of *Article 2 of the Convention*. It also notes the Government's indication that a draft Labour Code is under preparation to amend provisions concerning collective bargaining and collective agreements. The Committee had previously noted that section 57 did not suffice for the application of Article 2.

The Committee once again points out that the requirement of the Convention under *Article 2* is to ensure the insertion of a labour clause in public contracts so as to guarantee to the workers employed by the contractor, the prevailing labour conditions which have been established in any of the three ways there specified. The principal aim of a labour clause is to protect fair conditions of labour from the consequences of competitive practice of tendering for a public contract. The Committee recalls that section 57 of the Labour Code concerns the equality of treatment between a subcontractor's own workers and those of the employer. Therefore, it does not ensure the above-mentioned purpose of labour clauses in public contracts.

The Committee recalls that the Government once indicated in its earlier report certain actions taken by the Central Body for Management and Administration to circulate instructions that a clause should be included in all public contracts in order to guarantee to the workers concerned conditions of labour not less favourable than those of other workers performing the same work. The Committee notes with regret that no further information has been supplied in this regard.

Recalling that it has been commenting on the application of the Convention since its ratification by Egypt, the Committee again expresses the hope that the Government will take appropriate measures (whether by way of legislation or administrative instructions) to provide for the insertion of a labour clause in public contracts in accordance with the provisions of the Convention.

Ghana (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In its previous comments, the Committee noted the Government's earlier statement that the comments of the Committee had been noted and that the issue had been placed before the National Advisory Committee on Labour with the view of bringing the national legislation into conformity with *Articles 2 and 5 of the Convention* (inclusion of labour clauses in public contracts, and application of adequate sanctions and measures to ensure the payment of wages). It hopes that progress will be reported in the very near future.
>
> Meanwhile, the Committee noted the Government's indication in its report received on 18 December 1990 that no tender will be considered if it is not accompanied by a statement obtained from the Labour Department certifying the tenderer's compliance with rules, regulations and laws on remuneration and conditions of employment. The Committee requests the Government to supply further information on the manner in which the conditions of

employment (including wage rates and hours of work) the tenderers are thus required to comply with are established, and a copy of such certificate.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guinea (ratification: 1966)

The Committee notes the information supplied by the Government in its report to the effect that there are no legal or practical difficulties in implementing this Convention. The Committee recalls that States ratifying this Convention undertake, amongst other things, to ensure that contracts awarded by a public authority which involve the employment of workers by the other party to the contract include clauses ensuring for the workers concerned conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on *(Article 2 of the Convention)*, and that adequate sanctions are applied for failure to observe and apply such clauses *(Article 5)*.

The Committee also notes that the Government again states that enterprises which are awarded public contracts are subject to the provisions of the Labour Code and of sectoral collective agreements. It recalls that the general application of national labour legislation to workers does not release the Government from its obligation to take the necessary steps to ensure the inclusion and application of labour causes, as required by the Convention. The Committee again expresses the hope that the Government will shortly take the necessary measures to ensure that such clauses are included in all the public contracts provided for in *Article 1, paragraph 1(c)*, and thereby give effect to the Convention, on which the Committee has been commenting for several year.

Mauritania (ratification: 1963)

Further to its previous comments the Committee notes that Interministerial Order No. 035 of 3 June 1992, which establishes the labour clauses to be included in public contracts, was published in *Official Journal* No. 807 of 30 May 1993.

The Committee is also addressing a request directly to the Government concerning certain points.

Mauritius (ratification: 1969)

The Committee notes that the committee instituted to review the 1975 Labour Act has submitted its report which is presently under consideration by the Government.

The Committee recalls that, for a number of years, the Government has been indicating its intention to revise the 1975 labour legislation. It also recalls that the Labour Act of 1975 repealed the Labour Clauses in Public Contracts Ordinance of 1964, which had previously given effect to the provisions of the Convention. The Committee again suggests that the Government consider the possibility of taking the provisions of the above Ordinance into account in the review of the Labour Act.

The Committee trusts that the Government will take all necessary steps to ensure that amendments to the Labour Act are adopted in the near future in order to give effect to the provisions of this Convention, and it asks the Government to indicate any progress made.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted that the draft Decree to give effect to this Convention which it had noted in its 1987 observation was no longer being studied for adoption because of the development in the public administration of the country. It further noted that the new national Government had taken note of the Committee's comments and was disposed to study the possibilities of taking the provisions of the Convention into a legislative instrument after consultation with all the sectors and entities concerned.
>
> The Committee hopes that the Government will take necessary measures to ensure the application of the Convention in the near future. It is also addressing a direct request to the Government regarding the Specifications of Public Tenders (Model Articles and Conditions) supplied with the Government's previous report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Philippines (ratification: 1953)

The Committee notes the Government's indication in its report that the Labour Code covers the workers employed by public contractors. It also notes the attached Department Order No. 19, s. 1993 (Guidelines governing the employment of workers in the construction industry) and Department Order No. 13, s. 1988 (Minimum wage of workers of service contractors), which relate to the general regulation of conditions of employment in the construction industry and the service sector.

The Committee points out that, in order to give effect to the Convention, it is necessary to take measures that provide for the inclusion, in the contracts to which this Convention refers in *Article 1*, of clauses which ensure for the workers concerned terms and conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the same district in accordance with *Article 2(1) and (2)*. The Committee hopes that the Government will take the necessary measures to this end in the near future and that it will consult with the organizations of employers and workers concerned, as set out in *Article 2(3)*, in determining the terms of the clauses to be included. The Committee requests the Government to indicate any progress made in this respect.

The Committee also asks the Government to provide information requested under *point V of the report form*, including the number of contracts of the type covered by the Convention, the number of workers covered by such contracts and the number and nature of violations noted.

Rwanda (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In its previous comments, the Committee noted that the proposed legislation regulating public contracts had not been adopted.
>
> As regards sections 2 and 3 of the Labour Code (Act of 28 February 1967) defining, respectively, "the worker" and "the employer", the Committee pointed out in its earlier comments that the fact that general labour legislation applies without distinction to all workers does not release a government from the obligation under this Convention to ensure the inclusion in the public contracts specified in *Article 1, paragraph 1, of the Convention* of appropriate labour clauses so as to guarantee that the conditions of work (including wages)

of workers employed by public contractors are not less favourable than those established for work of the same character in that trade or industry in the same region, in accordance with *Article 2*.

The Committee hopes that the Government will take the necessary action through legislation or otherwise in the very near future to ensure the application of the Convention on this point.

Suriname (ratification: 1976)

The Committee notes the comments made by the Suriname Trade and Industry Association (VSB), which was transmitted by the Government in its communication dated 24 November 1994.

With reference to the Government's indication in its report that all existing labour legislation is applicable to the contract of employment between the public contractor and the employee, the VSB points out that such legislation is applicable only in the case of a series of similar contracts, which form a kind of one work agreement, and refers to section 1613, paragraph 2, of the Civil Code.

In the absence of the Government's comment on the point raised by the VSB, the Committee requests the Government to supply detailed information on the applicability of the labour legislation to workers engaged in the execution of public contracts.

The Committee however recalls that the application of the general labour legislation does not normally fulfil on its own the principal requirement of the Convention to ensure the insertion of labour clauses in public contracts. It is also addressing a direct request to the Government in this regard.

Turkey (ratification: 1961)

The Committee notes the observations communicated in August 1994 by the Confederation of Turkish Trade Unions (TURK-IS). TURK-IS considers that the provisions of Decree No. 88/13168 concerning general principles governing working conditions (labour clause) to be included in public contracts have not been given effect. Referring to the spreading practice of subcontracting, TURK-IS points out that the collective labour agreement concluded by the General Directorate of Highways and the Road, Building and Construction Workers' Union of Turkey (YOL-IS) is not applied to the employees of the contractors and subcontractors of the General Directorate.

The Committee notes that the Government's report was received only in February 1995, including further observations made by TURK-IS and observations by the Turkish Confederation of Employers' Association (TISK). The Committee will therefore examine the report, as well as any comments that the Government wishes to make on the points raised by TURK-IS and TISK, at its next session.

Zaire (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In its previous comments, the Committee noted the Government's earlier indication that it was engaged in efforts to harmonize its legislation with the provisions of this Convention. The Committee recalls that it has been commenting on the application of this Convention for many years; and that in 1976, at the Government's request, the International Labour Office sent a proposal for new provisions that could be incorporated into the existing legislation in order to give effect to the Convention. However, although the Government has stated on several occasions that it would adopt the necessary texts to give effect to the Convention, they

have not yet been adopted. The Committee therefore hopes that the Government will ensure that the text which is to give effect to the Convention and which the Government has been drafting since 1979, is adopted shortly.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Burundi, Denmark, Djibouti, Grenada, Guatemala, Iraq, Jamaica, Mauritania, Panama, Saint Lucia, Suriname, Swaziland, United Republic of Tanzania, Uganda, Uruguay.*

Information supplied by *Bahamas* and *Morocco* in answer to a direct request has been noted by the Committee.

Convention No. 95: Protection of Wages, 1949

Argentina (ratification: 1956)

1. In its previous comments, the Committee noted the observations made by the Unique Workers' Central (CUT) of Brazil concerning the payment of wages to certain Brazilian workers engaged in civil construction in Argentina, in relation to the application of *Article 12, paragraph 1, of the Convention* (regular payment of wages). The Committee notes the detailed information supplied by the Government on this subject. It also notes that the CUT withdrew its observations in a communication to the ILO Brazil Office dated 30 May 1994 in view of the improvements in the conditions of employment in the civil construction sector resulting from the joint activities of the Brazilian and Argentinian trade unions and the Brazilian Ministry of Labour.

2. The Committee also noted in its previous comments the observations made by the Congress of Argentinian Workers (CTA) relating to Decrees Nos. 1477/89 and 1478/89 respecting benefits to improve the nutrition of the worker and his family, as well as Decree No. 333/93 enumerating the benefits that do not have the character of remuneration.

The Government states in its report that the above decrees are intended to improve the living standards of workers and their family while maintaining their remuneration unchanged. The level of the benefit could have been determined as a function of any other parameter than a percentage of the wage. Remuneration and benefits are two legally separate items: benefits do not correspond to the service provided and are related to the family situation of the worker. Moreover, they are of a non-obligatory nature for employers.

The Committee notes these indications. It notes that by virtue of Decree No. 1477/89, employers are encouraged to establish this system of benefits in exchange for a reduction in the social contributions that they have to pay. It also notes that section 1 of both Decrees No. 1477/89 and No. 333/93 state that benefits intended to improve the nutrition of workers and their families do not constitute remuneration for the purposes of labour law, social security law "or for any other purpose". However, it notes that: (i) section 1 of Decree No. 1477 applies in cases of a subordinate relationship between an employer and the staff; (ii) the rate of the benefit differs according to whether or not the worker is covered by a collective labour agreement; and (iii) there is no reference in any of the provisions of the above texts to the family situation of the worker (single, married with or without children) and that, in contrast, the amount of the benefit is indexed to the wage.

From the above, the Committee believes that it can be concluded that there is a connection between the benefits designed to improve the nutrition of workers and their families and the work performed or service provided by virtue of a contract of employment. These "benefits", however they are termed (bonuses, supplementary benefits, etc.), constitute components of remuneration in the sense of *Article 1* of the Convention. They therefore have to be subject to the measures set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16* of the Convention. The Committee notes in this respect that the protection envisaged under Article 7 of the Convention is provided in law by Decree No. 1478 above.

The Committee requests the Government to indicate the measures which have been taken or are envisaged to ensure that the benefits provided by virtue of Decrees Nos. 1477/89 and 1478/89 are covered by the protection established in Chapter IV of Title IV of the conditions respecting the contract of employment.

3. The Committee also noted the CTA's allegations that, two years after the adoption of Act No. 23-982 respecting the consolidation of the monetary debts of the State up to 1 April 1991 after administrative or judicial recognition, no certificate has been issued recognizing that the debt was incurred. The Committee notes that the Government refers to Decree No. 1639/93 of 4 August 1993, which is intended to speed up the procedures for the settlement of consolidated debt recognized by the courts. It requests the Government to indicate whether the debt to which it refers in the above Decree also includes the wage arrears owed to workers in the public sector.

4. Since its last session, the Committee has further received observations from the Union of United Maritime Workers (SOMU), the Confederation of Educational Workers (CTERA) and the Union of Educational Workers of Rio Negro.

With regard to the SOMU's observations, the Government refers to its reply in Case No. 1684 submitted to the Committee on Freedom of Association, which relates, among other matters, to Decree No. 817/92 referred to by the SOMU. The Committee notes that Case No. 1684 concerns the legislative provisions adopted respecting the renegotiation of collective agreements which are in force. It notes that the SOMU's comments also refer to many other problems, including the deferred payment and non-payment of wages, which are not being examined by the Committee on Freedom of Association. The Committee requests the Government to provide information on the application in practice of the Convention in the maritime sector, particularly with regard to the payment of wages at regular intervals and cases of the non-payment of wages.

The observations of the two organizations of educational workers refer to the deferred payment of wages which are due. The Committee requests the Government to supply information on this point in the light of the provisions of *Article 12, paragraph 1*, of the Convention (regular payment of wages).

5. The Committee hopes that the Government will provide information on the application of the Convention, in accordance with *Article 16* of the Convention, including information on any difficulties encountered.

Bolivia (ratification: 1977)

The Committee recalls that in its earlier requests, it referred to the comments it made in 1983 concerning the application of Convention No. 117, regarding alleged abuses in the payment of wages to agricultural workers, in the form of pay stoppages and delay in the payment of wages as a means of inducing workers to remain in agricultural establishments, and the non-payment of wages due and advances on wages, which cause indebtedness among the workers and compel them to remain in the service of landowners until their debts are paid off. These allegations were presented in August 1977 by the Anti-slavery Society for the Protection of Human Rights to the Working Group on Slavery of the United Nations Subcommission on Prevention of Discrimination and Protection of Minorities.

The Committee notes with regret that the Government has not supplied information in this respect. It once again requests the Government to indicate whether it has conducted investigations into the above-mentioned allegations and to provide any available information. The Committee also requests the Government to provide information in accordance with *point V of the report form* on the application in practice of the Convention in the agriculture.

The Committee is also addressing a direct request to the Government concerning certain points.

Brazil (ratification: 1957)

1. The Committee noted, in its previous comments, the observation made by the Unique Workers' Central (CUT) concerning the payment of wages to some Brazilian workers engaged in civil construction in Argentina, which related to the application of *Article 12(1)* of the Convention (regular payment of wages). The Committee notes that the CUT withdrew this observation, by its communication to the ILO Office, Brazil, dated 30 May 1994, in view of the improvement brought about to the conditions of employment in the sector by the joint efforts of Brazilian and Argentinean trade unions and of the Ministry of Labour of Brazil.

The Committee hopes that the Government will provide in its future reports information on the application of the Convention in practice, in accordance with *point V of the report form*, including information on any difficulties encountered.

2. As to the points raised in the Committee's earlier observation concerning *Articles 6, 8, 9 and 10*, which was made with reference to its comments on Conventions Nos. 29 and 105, it noted that the Governing Body at its 258th Session (November 1993) had entrusted to a tripartite committee, the examination of a representation made by the Latin American Central of Workers (CLAT) under article 24 of the Constitution, alleging non-observance by Brazil of Conventions Nos. 29 and 105. In accordance with its customary practice, the Committee is postponing its comments on these points pending the Governing Body's action on the conclusions and recommendations of the above-mentioned Committee.

Congo (ratification: 1960)

The Committee notes that at its 261st Session (November 1994) the Governing Body set up a tripartite committee to examine the representation made under article 24 of the Constitution by the International Organization of Energy and Mines (IOEM) alleging non-observance by the Congo of the Protection of Wages Convention, No. 95.

Costa Rica (ratification: 1960)

The Committee notes the comments made by the Confederation of Workers Rerum Novarum (CTRN), which point out the long working hours effected without additional pay in the road transport sector. It invites the Government to provide information on the question in the light of *Articles 1* (definition of wages: "for work done or to be done") *and 12, paragraph 1* (regular payment of wages) *of the Convention.*

The Committee notes that the Government's report was received on 24 February 1995, and will examine it at its next session.

Côte d'Ivoire (ratification: 1960)

With reference to its previous comments, the Committee recalls that it noted the comments of the Trade Union International of Chemical, Oil and Allied Workers (communicated by a letter of 9 March 1988), on the application of *Article 12, paragraph 2, of the Convention*. These comments allege that workers who are members of the Union of Offshore and Onshore Workers of Côte d'Ivoire (SYNTRAOFFCI), who were recruited by intermediary companies on behalf of oil companies, did not receive certain amounts owed as a final settlement of all wages due upon termination of their contracts in 1984.

In its report the Government indicates that after fruitless attempts at an out-of-court settlement, first by means of an ad hoc committee set up for the purpose, then before the Labour Tribunal of Abidjan, two judicial decisions on the matter have now been handed down: the first by the Abidjan Labour Tribunal (on 25 February 1986), and the second by the Chamber for Social Affairs of the Abidjan Court of Appeal (on 24 June 1988). The Government further states that the companies involved in this matter have now disappeared from the territory of Côte d'Ivoire and that SYNTRAOFFCI has now been split into two separate unions, whose present leaders know nothing of the matter and have taken no steps to execute the Court of Appeal's decision. The Government considers that action on its part is therefore not required.

The Committee takes due note of this information. It notes that the above-mentioned decision handed down by the Court of Appeal (24 June 1984) orders the company SOAEM-CI to pay certain amounts as a final settlement of all entitlements due to 11 workers who were dismissed owing to the "ivorization of jobs". The Committee asks the Government to indicate whether this decision has been executed and whether there have been any other judicial decisions on this matter.

The Committee also asks the Government to indicate the general steps taken to ensure the application of the Convention in situations similar to that of the offshore workers recruited by intermediary companies, particularly as regards final settlements upon termination of work contracts (*Article 12, paragraph 2*), the information given to workers on wage conditions (*Article 14(a)*) and the definition of the persons responsible for compliance with laws and regulations on the payment of wages *(Article 15(b))*.

Cyprus (ratification: 1960)

The Committee recalls that it requested in its earlier comments the adoption of measures necessary to give effect to *Articles 8, 9, 10 and 15(d) of the Convention* — dealing respectively with deductions from wages, the attachment or assignment of wages, and wage records.

The Committee notes the Government's indication in its report that the Ministry of Labour and Social Insurance has collected information from the ILO and other sources, concerning legislation on protection of wages in other countries, and that the issue is currently under study with a view to updating, if necessary, the existing legislation and/or codes of conduct.

Recalling that the above measures had been requested for many years, the Committee hopes that the Government will soon be able to indicate the progress made in this regard.

Dominican Republic (ratification: 1973)

The Committee notes the Government's reports and the new Labour Code (promulgated by Act No. 16-92 of 29 May 1992).

Protection of wages in sugar plantations. Further to its previous observation, the Committee notes with interest that the provisions of the new Labour Code concerning the protection of wages are applicable to rural workers, including those in sugar plantations, by virtue of section 281. It hopes that their application will be effectively ensured in practice and requests the Government to provide information in accordance with *point V of the report form,* including for instance extracts from official reports of labour inspectors. Please refer, in particular, to the following points.

1. *Measures to guarantee observance of the statutory minimum wage.* With reference to its previous observation, the Committee notes the information supplied by the Government concerning the wages for work on the sugar cane harvest which are higher than the minimum wage rates. It also notes the Government's indication that a group of 18 labour inspectors are specifically nominated to keep a full-time watch over the work of cane-cutters. The Committee asks the Government to supply information on the findings of these inspectors, including the number of plantations visited, the infringements of the provisions on wage payment of the Labour Code reported and the sanctions imposed.

2. *Weighing the sugar cane.* The Committee notes the Government's statement in reply to the previous observation that in spite of the agreement between the State Sugar Board (CEA) and the trade unions, the representatives of unions have not been able to be present at the weighing of cane. It requests the Government to continue to report on any progress made in this respect, to refer to the situation concerning the weighing of sugar cane in plantations that do not belong to CEA, and to supply information on the activities of labour inspectors on this issue.

3. *Articles 3 and 7 (Payment of wages in cash and works stores).* The Committee notes that the rural workers including those in sugar plantations are covered by the provisions of the Code concerning the payment of wages in legal tender (section 195), and the prohibition of payment in wage tickets (section 196). It also notes the Government's indication that the practice of cashing wage tickets in the stores set up by the National Price Stabilization Institute (INESPRE) has been discontinued. The Committee requests the Government to provide information on the application in practice in sugar plantations of the above provisions of the Code as well as of section 208 (concerning the periodicity of wage payment, regarding *Article 12 of the Convention*) and of sanctions under section 211.

4. *Article 14 (Workers' information).* The Committee notes that the Government again refers to the role of labour inspectors in informing workers of their rights and relevant legislation. It notes that the Code does not contain provisions requiring that workers be informed, at the time of each payment of wages, of the particulars of their wages that may be subject to change. Please indicate any measures taken to give effect to this provision of the Convention.

The Committee is also addressing a direct request to the Government on certain points.

Egypt (ratification: 1960)

Article 4, paragraph 2, of the Convention. The Committee has been requesting the Government to take measures necessary to ensure (i) that allowances in kind should be appropriate for the personal use and benefit of the worker and his family and (ii) that the value attributed to such allowances should be fair and reasonable. It notes the Government's indication that it is in the process of preparing a Consolidated Labour Code. The Committee can only reiterate its hope that necessary action will soon be taken to ensure the compliance with the Convention on this point, on which it has been commenting for a number of years.

France (ratification: 1952)

The Committee notes the observations presented by the French Democratic Confederation of Labour (CFDT), communicated by the Government with its report. First, the CFDT notes the disparity between the evaluation of benefits in kind (accommodation) fixed by the Labour Code and that established by the social security scales, which, in its submission, is causing difficulties in the presentation of pay slips in certain sectors such as hotels. Secondly, the CFDT considers that the wording of section L.143-2 of the Labour Code, which provides that wages must be paid once a month, is ambiguous since it is not clear whether the term "month" means a calendar month or a one-month period between two dates.

The Committee notes that the Government has provided no information on these observations, which the Committee discusses in a direct request.

Guyana (ratification: 1966)

With reference to its previous requests, the Committee notes with satisfaction that section 22 of the Labour Act, Chapter 98.01 has been amended so as to give effect to *Article 4 of the Convention* concerning the partial payment of wages in kind.

It is also addressing a direct request to the Government concerning another point.

Iraq (ratification: 1960)

1. The Committee has been commenting on the measures to be taken following the recommendations of the tripartite committee set up to examine the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution, alleging non-observance by Iraq, inter alia, of the Convention (GB.250/15/25, May-June 1991), concerning non-payment of wages owed to Egyptian workers employed in Iraq, who left the country both before and after the invasion of Kuwait. In its previous observation, the Committee noted the Government's indication that the workers who left since the imposition of the embargo, which resulted in the freezing of Iraqi assets in foreign banks, received their wages in conformity with the law, with the exception of the percentage to be transferred in foreign currency. In this connection, the Government indicates in its report that, although the Off-America Bank of New York had released an amount of US$20 million from the deposit owned by the Iraqi Rafedain Bank's Cairo Branch to cover some of the Bank's outstanding transfers, none of the suspended outstanding transfers have been paid by the Cairo Branch of the Rafedain Bank.

The Committee recalls that the above tripartite committee made recommendations in its report, which was approved by the Governing Body of the ILO, that the Government should: (i) take appropriate measures so that the number of workers involved and the amounts owed to them will be determined; and (ii) take measures necessary for the effective payment of such amounts. The Committee notes that no specific information has been received on either of these points. It is therefore obliged to repeat its hope that the Government will take all the necessary measures and provide information on them.

2. The Committee notes the copy of the Labour Movement Agreement concluded between Iraq and the Philippines, attached to the report. It notes that, under article 12 of this Agreement, the workers employed under the agreement may transfer a percentage of their income through the normal banking channels in accordance with the receiving country's instructions and regulations on foreign transfers. The Committee requests the Government to clarify up to what percentage of the income the workers are allowed to remit under this provision. It would also be grateful if the Government would supply further information on the relevant instructions and regulations on foreign transfer.

3. The Committee recalls that it has noted, in its earlier observation, section 7 of the Labour Code which prescribes the treatment of Arab workers on an equal footing with Iraqi workers in regard to the rights and duties set forth in the Code, and an Agreement between Iraq and the Philippines stipulating the reciprocal equal treatment of migrant workers and nationals. The Committee again requests the Government to supply information concerning the protection of wages of non-Arab foreign workers who are not from the Philippines.

Mauritania (ratification: 1961)

In its previous comments the Committee referred to the conclusions of the committee set up to examine the representation made by the National Confederation of Workers of Senegal under article 24 of the ILO Constitution, which dealt, among other things, with the application of this Convention. In the above committee's report, adopted by the Governing Body at its 249th Session (February-March 1991, *Official Bulletin*, Vol. LXXIV, 1991, Series B, Supplement No. 1), the Government is asked to take all the necessary measures with a view to a final settlement of all the wages due to the persons who were obliged to leave Mauritania following the events of April 1989, in accordance with ***Article 12, paragraph 2, of the Convention***. The above Committee noted in its report that the national legislation provides for protection equivalent to that laid down by Article 12, paragraph 2, of the Convention, but that the legislation had not been applied in the case in point. It also considered that the Government should take all the necessary measures to establish or have established the amounts due to the workers concerned and to make a final settlement of their wages or ensure that it was made. To that end it considered it highly desirable that the Government request the assistance of the ILO and of other bodies which took part in assisting the workers concerned.

In its previous report the Government stated that the process of normalizing relations between the two countries was under way following the re-establishment of diplomatic relations with Senegal in April 1992 and the reopening of the frontiers since May 1992. Furthermore, bilateral technical commissions were working to settle the various issues.

The Committee notes the Government's statement that no questions concerning wage settlement have been raised.

The Committee again asks the Government to provide detailed information on all measures taken or envisaged to settle the above problem, and the result.

[The Government is asked to report in detail in 1996.]

Nicaragua (ratification: 1976)

The Committee notes that the Governing Body at its 261st Session (November 1994) entrusted to a tripartite committee the examination of a representation made by the Latin American Central of Workers (CLAT), under article 24 of the Constitution, alleging non-compliance by Nicaragua with certain Conventions including Convention No. 95 on protection of wages.

Pending the Governing Body's adoption of the conclusions and recommendations of the above Committee, the Committee is addressing a direct request to the Government concerning the draft Labour Code, on which it has been commenting with a view to bringing the national legislation in line with provisions of the Convention.

Philippines (ratification: 1953)

1. With reference to its previous comments on *Article 2(1) of the Convention*, the Committee takes note of the explanation by the Government on the applicability of legislative provisions concerning wages to the homeworkers, as well as the attached texts of Rule XIV, Book III of the Rules Implementing the Labour Code (Department Order No. 5 of 4 February 1992), and the Explanatory Bulletin on Employment of Homeworkers. It notes with satisfaction that the provisions of the Labour Code and its Implementing Regulations on the protection of wages apply to homeworkers.

2. The Committee has been commenting on the application of the Convention in respect of Filipino workers employed in Iraq. In this connection, the Committee notes that the Governing Body approved the report of the Committee set up to examine the representation made by the Egyptian Trade Union Federation, under article 24 of the ILO Constitution, alleging non-observance by Iraq, inter alia, of Convention No. 95, with regard to non-payment of wages to Egyptian workers employed in Iraq. The Committee notes the Government's indication that the Philippines has filed reparation claims, including that of unpaid wages owed to workers, with the UN Compensation Committee. With regard to agreements with the governments of countries where Filipino workers are employed, the Committee also notes the Government's indication that, although a meeting of the Philippine-Iraq Commission is tentatively scheduled for October 1994, the Philippine Government cannot take up the wage issue until the embargo on Iraq is lifted. It would be grateful if the Government would continue to supply information on any development on these issues.

The Committee further notes the Government's assurance in response to its direct request concerning *Article 6 of the Convention* that future discussions of such agreements will take into consideration only matters relating to employment opportunities and conditions, and not the manner by which wages may be disposed. The Committee requests the Government to bear in mind not only that such agreements must not directly limit the workers' freedom to dispose of their wages, but also that they should be free of any provisions that would indirectly have a similar effect, for instance, the limitation on the remittance of wages or savings to the workers' home country.

Portugal (ratification: 1983)

1. The Committee notes with satisfaction that Legislative Decree No. 5/94 of 11 January 1994 provides for the information to workers concerning the conditions, among others, of wages, in conformity with *Article 14(a) of the Convention*.

2. Further to its previous observations concerning the arrears and non-payment of wages for workers in certain enterprises, the Committee notes the reports of the labour inspectorate. The Committee notes that under the new methodology, the reports only show the cases, which were observed by the labour inspectorate during the period in question, of situations of illegal arrears and non-payment of wages, which added up to 16 enterprises, 583 workers during June 1994, for instance. It is thus impossible to appreciate whether or not the total number of such situations is diminishing. The Committee once again hopes that the Government will continue to make every effort to

resolve this situation and requests the Government to continue supplying information in this respect.

The Committee noted, in its previous observation, that the concept of "basic pay" used by Act No. 17/86 is a more limited concept than that set out in *Article 1 of the Convention*. It recalls that, under the Guidelines on the Application of this Act adopted by the Minister of Labour and Social Security on 8 October 1986, amounts such as holiday pay and maternity and other similar pay are not covered by this Act. The Committee notes the Government's explanation that the Act No. 17/86 provides for additional guarantee of wages by even permitting the worker to terminate or to suspend the employment contract. The Committee requests the Government to supply information on the measures to guarantee the payment of other kinds of remuneration than the "basic pay" covered by this Act.

3. The Committee requests the Government to refer to the request that is being addressed to it directly.

Russian Federation (ratification: 1961)

Further to its previous observation, the Committee notes the information supplied by the Government as well as the comments received from the Union of Workers in Geology, Land-Surveying and Cartography, and from the Trade Union Federation of Primorsky Krai, concerning the application of *Article 12(1) of the Convention* with regard to the regular payment of wages. According to the former union, which refers particularly to geological prospectors, over 50 per cent of the work carried out had yet to be paid for by the Government at the time of communication (February 1994), and wages and salaries had not been paid since October of the previous year. The latter federation, located in Vladivostok, alleges that the delay in wage payment amounts to three to five months. Both these organizations consider that the situation is a violation not only of the Convention but also of the national legislation.

The Government refers, in its report, again to the country's transition to a market-based economy and to the continuing decline in production. It indicates that, under Presidential Decree No. 1005 of 23 May 1994 concerning additional measures to regularize payment and to reinforce payment obligations, a corporate body may obtain cash resources from its bank up to a certain amount for wage and equivalent payments. Provision is also made so that the roubles can be obtained for payments, including that of wages, through the sale of resources in deposit or foreign currency accounts. The Government also refers to Presidential Decree No. 458 of 10 March 1994, concerning the liability for violation of the citizens' labour rights, which instructs the public prosecutor's office to strengthen supervision of compliance by enterprises and other organizations, irrespective of their form of ownership, with the labour legislation and collective agreements, paying special attention to preventing non-payment or delay in payment of wages; the Decree also urges the courts to give special attention to cases involving violation of citizens' labour rights, including such wage payment problems.

The Committee takes due note of the above information. It further notes that Decree No. 458 requires the Government to prepare amendments to the penal and administrative legislation for the above-mentioned purpose and to submit it to the legislature. The Committee requests the Government to continue to supply information on legislative or other measures taken to ensure the payment of wages at regular intervals.

The Committee would point out that, as is underlined by the above-mentioned workers' organizations, the problem appears to concern the application in practice of the national labour legislation giving effect to the Convention. It again refers to the conclusions of the committee set up to examine the representation alleging non-observance of this Convention by another country (*Official Bulletin*, Vol. LXVIII, 1985, Series B, Special Supplement 4/1985, paragraph 41), where it was noted that the effective application of the Convention, through the national provisions giving effect to it, should comprise three principal aspects: supervision, appropriate penalties to prevent and punish infringements and steps to make good the prejudice suffered.

The Committee therefore requests the Government to provide information on the practical application in accordance with *point V of the report form* including, for instance, extracts from official reports that show the number of investigations made, infringements observed and penalties imposed.

The Committee is also addressing a direct request to the Government concerning certain points.

Syrian Arab Republic (ratification: 1957)

Articles 8(1) and 11(1) of the Convention. In its previous observation, the Committee noted a revised draft Legislative Decree to amend certain provisions of the Labour Code, of which section 88(a) as amended would extend the wage protection under certain provisions (respecting limitations on deductions from wages and the protection of wages in cases of employer's bankruptcy) to temporary workers who are excluded from the coverage of the rest of the provisions of Book II, Chapter II of the Code.

The Committee takes note of a letter of the Minister of Social Affairs and Employment addressed to the Minister of the Presidency's Affairs, a copy of which is attached to the Government's report, asking information on the status of the said draft Legislative Decree.

The Committee hopes that the Legislative Decree will be adopted in the near future and requests the Government to furnish a copy once it has been adopted.

Turkey (ratification: 1961)

The Committee notes the Government's report as well as the copies of two court decisions concerning wages, and the comments made by the Confederation of Turkish Trade Unions (TURK-IS).

Regarding the application of *Article 12 of the Convention*, TURK-IS alleges that, in municipalities and other public sector establishments, wages are not paid regularly, with the amount of wages owed to workers reaching trillions of liras, and that such payments, as those of bonuses and of overtime, among others, are delayed considerably. It refers, in particular, to the inadequacy of the sanctions prescribed for such infringements of the right. TURK-IS also points out the non-application of the Convention to the agricultural sector and small commercial or artisanal enterprises who are not covered by relevant legislation.

As to the first point, the Government admits the existence of some cases in which wages are not paid in time by some municipalities. Regarding the second point, the Government refers to the amendment made to the scope of Labour Act No. 1475 (its extension to the agricultural sector and the small commercial and artisanal enterprises), which the Committee noted in its observation in 1990.

The Committee would emphasize the importance, for the effective application of the Convention, of the supervision of the compliance in practice with the national provisions giving effect to it, including appropriate provision and imposition of penalties for infringements. It requests the Government to supply, in accordance with *point V of the report form*, information on the application of the Convention in practice, with particular reference to the municipalities mentioned above, and to the agricultural sector and the small commercial and artisanal enterprises. The Committee asks the Government to provide, in particular, information on the numbers of inspections made, infringements of the relevant provisions observed and penalties imposed.

Ukraine (ratification: 1961)

The Committee notes the observations made by the Republican Council of the Trade Union of Workers of the Coalmining Industry of Ukraine. The said organization points out that, in violation of the Convention, as well as of the relevant national legislation, wages have not been paid in time and in full. It emphasizes the responsibility of the Government in view of the state ownership in the coalmining industry.

In response to these comments, the Government admits the existence of difficulty in the coalmining industry, in which the coal output has fallen sharply and enterprises faced outstanding debts of 15.6 trillion Ukrainian karbovantsi as of 1 December 1994. It has also supplied information on the measures it has taken, which include: holding a meeting of the ministries concerned to analyse the matter with the participation of the employers' and workers' organizations; the approval by the Cabinet of Ministers of a programme to develop the coalmining industry; the adoption by the Supreme Soviet of the market-oriented social and economic reform programme; allocations from the 1994 state budget, of which 21 trillion karbovantsi had been transferred to the Ministry of Coalmining Industry by 1 December 1994; the grant by the National Bank of short-term and long-term preferential credit to coalmining enterprises; the adoption of an Act exempting coalmining and coal-enriching plants from the payment of debts; and, preparing a decision, including the provisions for machinery to ensure the timely payment of wages, and increase in the managers' responsibility to meet wage payment dates.

The Committee takes due note of the above information and also of the Government's assurance to do its utmost fully to implement the Convention. It requests the Government to continue to provide information on this issue.

The Committee notes that the Government refers, among the above measures, to the Decree issued by the President of Ukraine on 14 September 1994, No. 53/94, on issuing and circulating promissory notes to cover the mutual debts of entrepreneurs and enterprises in Ukraine. Recalling that under *Article 3 of the Convention* the payment of wages in the form of promissory notes should be prohibited, the Committee asks the Government to supply a copy of this Decree and to indicate whether such promissory notes have also been used for the payment of wages.

[The Government is asked to report in detail in 1996.]

Venezuela (ratification: 1982)

The Committee notes with satisfaction that the Organic Labour Act (published in the *Official Gazette*, 20 December 1990, No. 4240 extraordinary, pages 1-75) gives effect, among other things, to the provisions of *Articles 6, 10 and 13, paragraph 1 of the Convention*, on which the Committee had previously commented.

It is also addressing a direct request to the Government on certain points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Belarus, Belgium, Belize, Bolivia, Burkina Faso, Central African Republic, Chad, Comoros, Djibouti, Dominica, Dominican Republic,* *France, Gabon, Guatemala, Guinea, Guyana, Hungary, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritius, Nicaragua, Niger, Nigeria, Poland, Portugal, Romania, Russian Federation, Saint Lucia, Sierra Leone, Solomon Islands, Sri Lanka, Sudan, Swaziland, United Republic of Tanzania, Uganda, Ukraine, Venezuela, Yemen, Zaire.*

Information supplied by *Colombia, Cuba* and *Mexico* in answer to a direct request has been noted by the Committee.

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Pakistan (ratification: 1952)

Part II of the Convention. 1. The Committee notes the information provided by the Government in reply to its earlier comments. The Government informs, as in its previous reports since 1987, that the provincial governments have been requested for expeditious supply of their views and comments on the draft Rules under the Fee-Charging Employment Agencies (Regulation) Act, 1976, and that every effort is being made to accomplish this work. The Committee observes, however, that the Act has not yet been brought into operation. With reference to the comments the Committee has been making over a number of years on the same subject, it trusts that the Government will not fail to take the necessary measures with a view to bring the Act into operation in the nearest future in order to give legislative effect to the requirement of the Convention concerning the abolition of fee-charging employment agencies "within a limited period of time", but not "until a public employment service is established" *(Article 3 of the Convention)*.

2. In its previous comments, the Committee noted the observations made in October 1993, and reiterated in October 1994, by the All-Pakistan Federation of Trade Unions stating that effective measures should be taken regarding supervision of agencies for recruiting workers abroad. It asked the Government to make its comments on the matters raised in these observations. The Government states in its reply that the present socio-economic conditions in the country do not permit it to abolish overseas employment-promoting agencies. The Government describes the arrangements made under the Emigration Ordinance of 1979 and Rules made thereunder for supervision of the Overseas Employment Promoters, the licensing system and the fixing of fees they are allowed to charge. The Committee notes this information. It would be grateful if the Government would continue to supply, in its future reports, any relevant information on the fee-charging employment agencies for which exceptions are allowed under *Article 5* of the Convention, as required under *Article 9* of the Convention (number of agencies concerned, scope of their activities, reasons for the exceptions, supervision of their activities).

3. The Committee reiterates its request to the Government to give a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from official reports, information regarding the number and nature of the contraventions reported, and any other particulars bearing on the practical application of the Convention, as required by *point V of the report form*.

[The Government is asked to report in detail in 1996.]

Convention No. 97: Migration for Employment (Revised), 1949

Brazil (ratification: 1965)

The Committee refers to its previous comments in which it indicated that the Unique Workers Central (CUT) had observed that the working conditions of Brazilian workers recruited by Brazilian employment agencies to work on construction sites in Argentina (La Plata et Quilmes) were very much inferior to those of Argentine workers.

The Committee notes the statement by the CUT supplied by the Government in its report, that it was withdrawing its observation. The Committee recalls the indications in paragraphs 80 to 108 of its general report of 1986 concerning the comments of employers' and workers' organizations on the implementation of international labour standards. It recalls in particular the indication in its paragraph 91 that "once the Committee of Experts has taken note of such comments and any relevant remarks made by the Government, it decides whether any action must be taken on them and makes its own comments".

The Committee also notes the CUT's statement in its letter that the working conditions in this sector, which caused the death of a Brazilian worker, have been improved, thanks to the efforts of the Brazilian and Argentine trade union movements and the commitment of the Brazilian Ministry of Labour. The Committee asks the Government to indicate the measures taken, in the light of *Article 3, paragraphs 1 and 2* (steps against misleading propaganda), and *Article 7, paragraph 1* (international cooperation between services concerning migration), *of the Convention* and *Articles 3, paragraph 3(b)* (recruitment by private agencies), *and 4* (free public employment service) *of Annex I*, which made the above improvements possible. It also asks the Government to provide information on the nature of the improvements.

[The Government is asked to report in detail in 1996.]

Nigeria (ratification: 1960)

The Committee notes the massive expulsion measures taken against Chadian workers, including migrant workers of Chadian nationality.

According to the information disseminated by the International Federation of Human Rights (FIDH), a large number of the Chadian nationals who were arrested and then expelled were migrant workers, in possession of valid residence permits. The FIDH considers that the massive deportation of non-nationals, particularly to a country in which there may be a risk of human rights violations, is rigorously prohibited by international human rights instruments, including the African Charter of Human and People's Rights, which was ratified by Nigeria in 1990.

The Committee recalls in this respect the provisions of the Migration for Employment Recommendation (Revised), 1949 (No. 86), which supplements the Convention and states in Paragraph 18 that when a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person from its territory on account of his lack of means or the state of the employment market. Moreover, account should be taken of the length of time the migrant has been in the territory of immigration and the migrant must have been given reasonable notice so as to give him time to dispose of his property. Finally, the necessary arrangements have to have been made to ensure that he and the members of his family are treated in a humane manner.

The Committee also recalls the provisions of the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and

Displaced Persons, which suggests in Article 25, paragraph 2, that immigration countries which are parties to such an agreement should undertake not to send refugees and displaced persons or migrants who do not wish to return to their country of origin for political reasons back to their territory of origin, unless they formally express this desire by a request to the competent authority of the territory of immigration and the representatives of the United Nations High Commissioner for Refugees.

The Committee requests the Government to indicate the measures taken to ensure that the departure of the migrant workers concerned and the members of their families occurs in conditions of dignity which are in accordance with the above indications, as well as the measures taken under *Article 6, paragraph 1(a) and (b), of the Convention*, with a view to ensuring the final payment of the remuneration due to these workers who are legally within its territory, as well as the maintenance of their acquired social security rights.

Spain (ratification: 1967)

In its previous comments the Committee noted the information supplied by the Government concerning the incident that occurred during the police operation of 18 July 1993 which led to the disappearance of three Moroccan migrants, and the meetings between its representatives and those of the Moroccan Government for the purpose of establishing closer relations with the latter in order to take action against clandestine immigration networks.

The Committee notes with regret that the Government's report contains no information on this matter. It asks the Government to indicate the measures taken to prevent the recurrence of such an incident and to facilitate the departure, journey and reception of migrant workers, in accordance with *Article 4 of the Convention*.

United Kingdom (ratification: 1951)

The Committee notes the Government's report as well as the observations made by the Trades Union Congress (TUC) on the application of the Convention and the comments made in reply by the Government.

The Committee notes that the TUC considers that the "Habitual Residence Test", which came into force on 1 August 1994, restricts access to income support, housing benefit and council tax benefit for some immigrants. The Government indicates that the Habitual Residence Test applies in the same way to all people, including British citizens, who claim the above-mentioned benefits. It further states, referring to *Article 6(1)(b)(ii) of the Convention*, that the Test has been introduced to ensure that access to non-contributory, income-related benefits is focused on those people whom the Government believes it is right that the British taxpayer should be asked to support.

The Committee notes that the Habitual Residence Test is not applied regarding the social security contingencies covered by *Article 6(1)(b)* and therefore does not fall within the scope of the Convention. It hopes that the Government will provide information in its future reports if any test that takes into consideration such factors as the person's nationality, race, religion or sex is introduced for determining the eligibility for social security benefits covered by the Convention.

The Committee is also addressing a direct request to the Government on certain points.

Zambia (ratification: 1964)

The Committee notes the information supplied in the Government's latest report.

In the comments that it has been making for many years, the Committee has emphasized the need to amend the Second Schedule to the Zambia National Provident Act in order to ensure treatment no less favourable than that which it applies to its nationals in respect of social security, in accordance with *Article 6, paragraph 1(b), of the Convention*, and to restrict any exclusion from the Zambia National Provident Fund to foreign workers engaged on short-term contracts and under specific conditions of work who already benefit from more advantageous social security coverage by their country of origin. The Committee notes with regret that no measure has been adopted for this purpose. The Committee notes that the Government once again states that a new national security scheme, which is being prepared, will respect the equality of treatment of foreign workers in this regard.

The Committee requests the Government to supply a copy of the provisions of the new social security legislation giving effect to Article 6, paragraph 1(b), of the Convention, as soon as it is adopted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belgium, Burkina Faso, Cameroon, Cyprus, Ecuador, Germany, Guatemala, Guyana, Israel, Kenya, Mauritius, New Zealand, Norway, Portugal, Saint Lucia, Spain, Trinidad and Tobago, United Kingdom, Uruguay.***

Convention No. 98: Right to Organize and Collective Bargaining, 1949

Cameroon (ratification: 1962)

The Committee notes the information supplied by the Government in its report.

Article 1, paragraph 2, of the Convention. The Committee notes the Government's statement in its report that measures are to be taken to bring the legislation into conformity with the Convention, and expresses the firm hope that sections 6(2) and 166 of the 1992 Labour Code, under which a fine of from 50,000 to 500,000 francs may be imposed on members responsible for the administration or management of a non-registered union, who act as if the union were registered, will be repealed in the near future so as to ensure that all workers, and particularly public employees, teachers, persons who form trade unions and trade union leaders, have adequate protection against acts calculated to do them harm by reason of union membership or because of participation in union activities. The Committee asks the Government to provide in its next report the texts of any measures taken to this end.

Chad (ratification: 1960)

The Committee notes with regret that for the second consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read with as follows:

> The Committee recalls the need to amend section 119 of the Labour Code which empowers the administration to intervene in the collective bargaining process, and sections 121 and 122 of the Labour Code concerning prior authorization for the entry into force of

collective agreements, in order to bring the legislation into conformity with *Article 4 of the Convention*.

The Committee trusts that the draft Labour Code prepared in 1988 with ILO assistance will be adopted in the near future since the above-mentioned provisions are not reproduced in it. It asks the Government to indicate any progress made in this respect in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1976)

The Committee notes the Government's report, the information supplied by a Government representative at the Conference Committee in 1994 and the subsequent discussions.

The Committee recalls that its previous comments concerned:

- the lack of protection against acts of anti-union discrimination for members of mixed trade unions (made up of "official workers" and "public employees", in accordance with sections 57 and 58 of Act No. 50 of 1990); and
- the prohibition placed on unions of "public employees" from concluding collective agreements (sections 414(4) and 416 of the Labour Code).

With regard to the issue of anti-union discrimination, the Committee notes with satisfaction that in December 1993 the Constitutional Court ruled that section 409 of the Labour Code which limited trade union immunity to public employees and official workers with executive, confidential or management duties was in breach of the 1991 Political Constitution and therefore null and void. It thereby removed the existing restriction on the full enjoyment by all trade union leaders of trade union privileges. The Committee asks the Government to provide information on the adoption of any text repealing the above provision.

With regard to the prohibition placed on "public employees" from bargaining collectively, the Committee takes note of the Government's observations and must again insist that it take steps to ensure that the legislation is amended so that "public employees" who are not engaged "in the administration of the State" are not denied the right to negotiate their conditions of employment collectively, in accordance with *Articles 4 and 6 of the Convention*.

The Committee notes with interest the statements made by a government representative at the Conference Committee in 1994, to the effect that the Government undertook to pursue its efforts to align the legislation with the requirements of ratified Conventions, possibly with technical cooperation from the ILO. The Committee hopes that in its next report the Government will keep it informed of any resulting changes in the legislation. The Committee is addressing a request directly to the Government on the requirements for collective bargaining by industrial or branch unions.

Croatia (ratification: 1991)

The Committee notes the information supplied by the Government in its first report on the application of the Convention. The Committee also notes the comments made by the Autonomous Trade Unions of Croatia and the Government's observations in this regard.

First, the Committee observes that the Autonomous Trade Unions of Croatia refers to problems in the application of section 95 of the 1992 Labour Relations Act, which provides that in the event that two or more trade unions have been formed, the right to represent the workers in collective negotiations is laid down by a joint agreement of all the trade unions concerned, and that if no such agreement is reached, representation shall be settled by discussion between the workers of the union which refuses to negotiate and the other unions concerned. The above organization complains that this provision does not specify who is to organize the discussions for taking decisions, or in what manner, or what is to be done in the event of a negative decision. The organization also states that, the fact that more than 70 trade unions have to reach an agreement may mean that failure to agree on the part of one of them may jeopardize the negotiation of a collective agreement.

Although the above provision does not appear to infringe the right of trade unions to negotiate collectively, it is not conducive to collective bargaining within the meaning of Article 4 of the Convention. It would therefore be advisable for the legislation to establish that, if the unions do not reach an agreement, they shall at least have the right to conclude agreements on behalf of their members, or to provide for conciliation procedures. The Committee asks the Government to take all necessary steps to bring its legislation into closer conformity with the Convention, and to keep it informed of developments.

Secondly, the Committee notes that the Autonomous Trade Unions of Croatia complains about the promulgation of the Decree on wages of 3 October 1993, which imposes a minimum wage, and indicates that the latter is to serve as a basis for determining the wages of all workers. The Committee notes the Government's statements in connection with the Decree that: (1) it was promulgated because the collective agreements with clauses on this subject had expired and the parties had failed to conclude new agreements; (2) the trade union federations were consulted but their proposals were not accepted because in the present state of the economy of the Republic of Croatia this would have endangered the Government's efforts to curb inflation and improve the national economy by means of the stabilization programme; (3) it regulates the public sector; (4) it was issued in the context of an economic stabilization programme and a social programme for maintaining the standard of living; and (5) it was issued on a temporary basis.

In this connection the Committee reminds the Government that if, as part of an economic stabilization or structural adjustment policy (i.e. for unavoidable reasons of national and economic interest) a government provides that wage rates may not be fixed freely by collective bargaining, this restriction must be applied as an exceptional measure and limited to what is essential, must not exceed a reasonable period and must be accompanied by guarantees for the effective protection of the living standards of the workers concerned. The Committee hopes that in the future the independence of the parties will be maintained when working conditions are negotiated (and that wage rates may be fixed through collective negotiation), and asks the Government to state whether the period of validity of the above-mentioned Decree has been extended and, if so, until when.

The Committee is also sending the Government a direct request.

Egypt (ratification: 1954)

The Committee notes the information supplied by the Government in its reports.

With reference to its previous comments on the need to amend section 87 of the Labour Code as amended by Act No. 137 of 1981, which provides that any clause of a collective agreement which is liable to impair the economic interests of the country shall be null and void, the Committee again recalls that a requirement imposed under penalty of nullification restricts the scope of collective bargaining and is liable to undermine the principle of voluntary negotiation laid down in ***Article 4 of the Convention***. It stresses that in the event of economic difficulties the Government should resort to persuasion rather than constraint and that in any event the parties must remain free as to their final decisions.

Recalling that section 157(3) of the draft Labour Code no longer referred to the economic interests of the country as grounds for the cancellation of a clause of a collective agreement and noting with interest from the Government's report that the tripartite committee responsible for amending the Labour Code took note of the Committee of Experts' comments, the Committee asks the Government to indicate in its next report the measures that have actually been taken to amend section 87 of the Labour Code along the lines of the draft new Code in order to bring the legislation into conformity with the requirements of the Convention on this point.

Gabon (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comment concerning the need to adopt legislative provisions in order to give full effect to *Articles 1 and 2 of the Convention*, the Committee notes from the information supplied by the Government that the work of revising Act 5/78 to issue the Labour Code are well under way.
>
> The Committee points out that, even if, as it emphasised in its previous observation, the provisions of the Common Agreement cover the gaps identified in the law with regard to Article 1 of the Convention (and, according to the previous comments made by the Employers' Confederation of Gabon, all the agreements signed since 1982 have included these provisions), legislative provisions accompanied by sufficiently effective and dissuasive sanctions need to be adopted in order to give workers adequate protection against acts of anti-union discrimination and workers' organizations protection against acts of interference by employers.
>
> The Committee trusts that the work of revising the Labour Code will be completed in the near future and requests the Government to supply information on the measures that have been taken in order to bring the legislation into greater conformity with Articles 1 and 2 of the Convention.

Ghana (ratification: 1959)

The Committee notes the observations of the Ghana Trades Union Congress (TUC) and the reply of the Government thereto.

1. In its communication concerning certain restrictions on bargaining of wages and salaries in subsidized (publicly financed) organizations, the TUC states that in order to narrow the disparities between civil service salaries and those of public sector agencies, the Government issued Circular No. B.2/93 which introduced a freeze on salaries and wages in subsidized organizations which employ union members with collective bargaining rights. The Committee notes the TUC's statement that subsidized organizations are not civil service establishments and that the right of their employees to bargain collectively and freely becomes frustrated by this directive. The Government states that the above-mentioned Circular was not aimed at stopping negotiations on wages and salaries. The Circular was issued to enable the Government time to study an impending report of a Salaries Commission on salary relativities; however, steps have been taken since then to withdraw the said Circular.

The Committee notes the above information and would recall that since *Article 6 of Convention No. 98* only allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages (see 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 262).

2. In its communication relating to redundancies in the cocoa industry, the TUC explains that section 2 of the Provisional National Defence Council (PNDC) Law 125 outlaws collective bargaining within the Ghana Cocoa Board in cases where the Board decides to declare workers redundant, while section 3 sets aside provisions in existing collective agreements with respect to Redundancy Awards. By virtue of this law, 10,400 workers were declared redundant by the Cocoa Board in July 1993. Contrary to its own previous decision to pay two years' salary to redundant workers as severance pay, the Cocoa Board decided to reduce the award to six months' pay, even though other workers declared redundant in January 1993 were paid two years' award.

The Committee notes the Government's statement that agreement was reached to pay the severance award to the above-mentioned 10,400 workers based on an formula agreed between the Ghana Cocoa Board and the trade unions, and that payment has been made accordingly. It further notes that the Government is taking steps to repeal the law in question; it would request the Government to supply the repealing legislation.

Haiti (ratification: 1957)

The Committee notes that for the second year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observation, the Committee asked the Government to report on the progress of (1) the revision of section 34 of the Decree of 4 November 1983, which confers on the Service of Social Organizations the power to intervene in the preparation of collective agreements, and (2) the adoption of specific provisions prescribing protective measures against anti-union discrimination at the time of recruitment and reinstatement of workers dismissed on grounds of legitimate trade union activities.
>
> The Committee notes that, in its previous reports, the Government indicated that the committee in charge of reforming the Labour Code was engaged in a comprehensive examination of the Decrees being drafted to amend section 34 of the Decree of 4 November 1983 and the Decrees concerning protective measures against anti-union discrimination.
>
> The Committee would ask the Government to provide information in its next report on the measures taken by the above committee to bring the legislation into full conformity with the Convention.

Indonesia (ratification: 1957)

The Committee takes note of the written and oral information supplied to the Conference Committee in June 1994 and the discussion which took place there. It further notes the conclusions of the Committee on Freedom of Association in Case No. 1756 (see 295th Report, paragraphs 398 to 423, approved by the Governing Body at its 261st Session, November 1994).

The Committee recalls that its comments have for a number of years concerned the following points:

- the absence of specific legislative provisions accompanied by sufficiently effective and dissuasive sanctions to protect workers against acts of anti-union discrimination at the time of recruitment or during the employment relationship (*Article 1 of the Convention*);

- the absence of sufficiently detailed legislative provisions to protect workers' organizations against acts of interference by employers or their organizations (*Article 2*);
- the restriction on free collective bargaining whereby only federations covering at least 20 provinces and grouping a large number of trade unions may conclude collective agreements; and provisions preventing workers from engaging voluntarily in collective bargaining and concluding collective labour agreements through freely chosen representatives (*Article 4*).

1. *Protection against acts of anti-union discrimination.* The Committee notes from the conclusions of the Committee on Freedom of Association in Case No. 1756 that the measures taken by the Government to settle cases of worker dismissals did not guarantee adequate protection to workers against acts of anti-union discrimination since the legislation allows an employer to invoke "lack of harmony in the working relationship" to justify the dismissal of workers who are actually only exercising their fundamental right to organize. It recalls the recommendations of the direct contacts mission that steps should be taken, in law and fact, to guarantee workers effective protection against acts of anti-union discrimination by employers, including the adoption of provisions to remedy evidentiary difficulties and the strengthening of penalties and enforcement provisions in this regard. The Committee notes from the Government's statement in the Conference Committee that Ministerial Manpower Decree No. 438 of 1992 explained that employers shall not take any unfavourable action towards workers on the basis of trade union membership, whether as an official or a member. The Committee notes from the conclusions of the direct contacts mission that this Decree, along with a number of other regulations or guidelines providing for the protection of workers against acts of anti-union discrimination should be embodied in an Act so as to ensure more adequate protection under the law. Noting the Government's statement at the Conference Committee that it agrees with the proposal for strengthening sanctions and intends to amend the labour legislation, with the International Labour Office's assistance, the Committee urges it to take the necessary measures to provide expressly in the legislation protection for workers against acts of anti-union discrimination (including dismissal, as well as other forms of prejudicial action, such as transfer, demotion, etc.), accompanied by sufficiently effective and dissuasive sanctions.

2. *Protection of workers' organizations against acts of interference by employers.* In its previous comments, the Committee noted the Government's statement that the legislation, Ministerial Decision No. 438/1992, and the Code of Conduct eliminated the possibility of interference by employers. The Committee requested the Government to provide information on how the provisions of the Ministerial Decision No. 438 and the Code of Conduct were applied in practice. As no reply has yet been received from the Government in this regard, the Committee once again requests the Government to indicate in its next report the manner in which these texts are applied in practice so as to ensure the protection of workers' organizations from acts of interference by the employer and to provide information on the measures taken or envisaged to strengthen the legislation in this regard.

3. *Restrictions on collective bargaining.* The Committee notes the adoption of Minister of Manpower Decree No. 01/1994 concerning Trade Unions at Company Level (SPTP) which, according to the Government, gives a wide opportunity to workers at the plant level to establish an organization which will be able to bargain and negotiate a

collective labour agreement, with no obligation to join any particular organization. The Committee notes that this regulation provides that the labour union can be established in companies which employ 25 or more workers, and/or where a labour union has not been formed (section 4(1)) and where more that 50 per cent of all workers have given their approval for the establishment (section 13). In this regard, it draws the Government's attention to paragraph 241 of its 1994 *General Survey on Freedom of Association and Collective Bargaining* in which it observes that, where the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent, a majority union failing to secure this absolute majority is denied the possibility of bargaining. In such a system the Committee considers that if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all unions in the unit, at least on behalf of their own members.

The Committee further notes that Decree No. 01/1994 makes reference to the requirements of Regulation No. 3/1993 which provides that, to be registered, a trade union must have at least 100 units at plant level, 25 organizations at the district level and five organizations at the provincial level; alternatively, it must have at least 10,000 members throughout Indonesia. While these requirements are lower than those contained in the previous Regulation (No. 5/1987), they remain so stringent as to constitute a major obstacle to collective bargaining since very few trade unions can obtain their registration in these circumstances. The Government is therefore requested to indicate the measures taken or envisaged to amend Regulation No. 3 so that the requirements for registration are not excessive and so that trade unions can be recognized at the workplace for the purposes of collective bargaining according to objective and pre-established criteria which will not effectively result in impediments to free collective bargaining.

4. The Committee expresses the firm hope that the Government will take the necessary measures in the very near future to ensure in its legislation the protection of the provisions of the Convention and recalls that the Office remains ready and willing to provide technical assistance in this regard.

Jamaica (ratification: 1962)

The Committee notes with regret that for the second consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> - the broad powers of the Minister to cause a ballot to be taken to choose the bargaining agent (section 5(1) of the Labour Relations and Industrial Disputes Act, 1975 (No. 14) and sections 3(1) and 3(2) of the regulations issued thereunder), without the right of appeal;
> - the denial of the right to negotiate collectively in the case of the workers in a bargaining unit when these workers do not amount to more than 40 per cent of the unit or when, if the former condition is satisfied, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the Minister has caused to be taken (section 5(5) of Act No. 14 of 1975, and section 3(1)(d) of the regulations issued thereunder).
>
> For several years, the Committee has been requesting the Government to take measures to amend the provisions concerning the procedure for designating a union as bargaining agent so as to eliminate the discretionary powers of the Minister and to enable the workers of a bargaining unit to bargain collectively, even where the conditions relating to the numbers in a trade union and the votes cast in a ballot are not satisfied.

The Committee urges the Government to keep it informed in its next report of the measures that have been taken or envisaged to guarantee objectivity of the recognition procedure and to ensure that the union representing the largest number of workers is granted collective bargaining rights concerning terms and conditions of employment, at least on behalf of its own members.

Jordan (ratification: 1968)

The Committee notes that the Government's report contains no information in reply to its previous comments. It is therefore bound to repeat its previous comments which read as follows:

> 1. The Committee recalls the need to adopt specific provisions enforceable by sufficiently dissuasive sanctions to ensure the application of *Article 2* of the Convention which provides that "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each others' agents or members in their establishment, functioning or administration", and defines certain specific acts of interference such as "acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations". The Committee therefore urges the Government once again to take the necessary steps to bring its legislation into full conformity with the Convention in this respect.
>
> 2. With reference to its previous comments on the lack of provisions to ensure that the Convention is applied to domestic servants and agricultural workers who are not employed in government organizations, mechanical equipment establishments or irrigation work, the Committee notes with regret that the draft Labour Code continues to exclude these two categories of workers.
>
> The Committee is bound to stress once again the need to grant all agricultural and domestic workers, without exception, protection against acts of anti-union discrimination as well as the right to negotiate their conditions of employment collectively. It asks the Government to take the necessary steps in the very near future to give effect to the Convention and to indicate them in its next report.
>
> 3. The Committee asks the Government to supply a copy of the new Labour Code and the texts of any other laws giving effect to the Convention as soon as they have been adopted.

Kenya (ratification: 1964)

The Committee notes the information supplied by the Government in its report as well as the conclusions of the Committee on Freedom of Association in Case No. 1792 (295th Report of the Committee, approved by the Governing Body at its 261st Session (November 1994)).

In its previous direct request, the Committee noted that the Government had appointed a tripartite committee to fully inquire into the question of the need for allowing the establishment of a trade union to cater to the civil service on all issues relating to collective bargaining on wages, terms and conditions of service, etc. The Government had indicated that that committee had drawn up an interim report with specific recommendations which would be sent to the ILO once the Government had taken a final decision.

The Government states that consultations are still taking place and that it has still not taken a final decision on the matter. The Committee requests the Government to keep it informed of any developments regarding this matter.

Furthermore, the Committee, like the Committee on Freedom of Association, would urge the Government to take the necessary steps to ensure the right of civil servants, not engaged in the administration of the State, to establish and join organizations of their own choosing for the promotion and defence of their occupational interests through voluntary collective bargaining.

Liberia (ratification: 1962)

The Committee notes with regret that for the fourth year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that no measures have been taken to eliminate the discrepancies between the national legislation and the Convention.
>
> In the circumstances, the Committee can only recall its comments of the last few years which concern the following points:
>
> 1. *Article 1 of the Convention*. The provisions of the national legislation are insufficient to guarantee workers adequate protection, accompanied by sufficiently effective and dissuasive sanctions, at the time of recruitment and during the employment relationship.
>
> 2. *Article 2*. The present provisions are not sufficient to ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations.
>
> 3. *Articles 4 and 6*. The possibility of collective bargaining is not offered to employees of state enterprises and other authorities, since these categories are excluded from the scope of the Labour Code, whereas under Article 6 of the Convention, only public servants engaged in the administration of the State are not covered by the Convention.
>
> As the Committee has been repeating these comments for years, it again asks the Government to do everything in its power to take the necessary measures to ensure that full effect is given to the Convention in the very near future.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes with regret that for the second consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For many years, the Committee has been pointing out that certain provisions of the national legislation do not sufficiently implement or are not in conformity with the Convention, namely:
>
> - section 34 of Act No. 107 of 1975 concerning trade unions, which provides protection against acts of discrimination for trade union activities during the employment relationship, but not at the time of the recruitment of a worker (*Article 1 of the Convention*);
> - sections 63, 64, 65 and 67 of the Labour Code, which require the clauses of collective agreements to be in conformity with the economic interest (*Article 4*), whereas, in the Committee's opinion, rather than subjecting the validity of collective agreements to government approval, steps should be taken to persuade the parties to collective bargaining to have regard voluntarily to major economic and social policy considerations of general interest invoked by the Government;
> - the absence of provisions ensuring adequate protection against acts of anti-union discrimination and granting the right of collective bargaining to public servants not engaged in the administration of the State, to agricultural workers and to seafarers.

The Committee noted that the National Commission that had been given the task of examining international labour Conventions had recommended that sections 4(d) and 34 of the Act of 1975, and sections 63, 64, 65 and 67 of the Labour Code be repealed or amended.

The Committee emphasizes the necessity of adopting measures to guarantee protection against acts of anti-union discrimination and to secure the right to bargain collectively for public servants not engaged in the administration of the State, agricultural workers and seafarers.

It hopes that the Government will make every effort to take the necessary measures in the very near future and that it will supply information in its next report on any progress that has been achieved on these various points.

Mauritius (ratification: 1969)

With reference to its previous comments on the need to include in the labour legislation an express provision protecting workers' organizations against acts of interference, the Committee notes the information provided by the Government in its report according to which on 17 May 1994, the Trade Union and the Labour Relations Bill was introduced in the National Assembly; this Bill will replace the Industrial Relations Act 1973. The Committee notes with interest that this Bill prohibits an employer or organization of employers from (i) interfering with the establishment, functioning or administration of a trade union of employees (subsection 100(1)(a)); and (ii) from promoting or giving any assistance to a trade union of employees which is calculated to keep the trade union under its control (subsection 100(1)(b)). The Committee further notes that under subsection 100(3), a violation of this provision constitutes an offence punishable by a fine.

The Committee requests the Government to keep it informed of developments regarding the adoption of this Bill, and to provide it with a copy once it has been adopted.

Pakistan (ratification: 1952)

The Committee notes the Government's report as well as the conclusion of the Committee on Freedom of Association in Case No. 1726 (294th Report, paragraphs 372-419, approved by the Governing Body in June 1994) and Case No. 1771 (295th Report, paragraphs 482-501, approved by the Governing Body in November 1994).

The Committee's previous observations referred to inconsistencies between the national legislation and the following Articles of the Convention:

- *Article 4 of the Convention.* Limitations on free collective bargaining in the banking and financial sector (sections 38A to 38I of the Industrial Relations Ordinance, 1969); and
- denial of the rights guaranteed by *Articles 1, 2 and 4* for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980).

1. The Government reiterates its earlier statement concerning the procedure used by the Wage Commission for banks and financial institutions intended to provide workers the opportunity to bargain with the Commission. The Government is of the view that, in the institutions which rely on the deposits of the general public, to allow the right of collective bargaining would be tantamount to putting into jeopardy the trust given by the individual depositors to the bank and other financial institutions. The Government further indicates that the Wage Commission has recommended that staff unions of banks

and financial institutions should not be allowed to negotiate concerning wages and other fringe benefits and conditions of service as they are reviewed every three years by an independent Wage Commission set up by the Government. Accordingly, for these reasons, the Government indicates that it would not be advisable to change the status quo. It would accept, however, that negotiation be allowed in respect of monitoring implementation of awards and other minor matters such as transfer and posting, and the creation of proper working conditions.

While noting these explanations, the Committee would recall that *Article 4* provides that measures appropriate to national conditions shall be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations. Whatever the kind of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining *between the parties*, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they *may* have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement. (See 1994 *General Survey on Freedom of Association and Collective Bargaining*, paragraph 247.) The Committee would, therefore, once again request the Government to reconsider the matter and to indicate, in its next report, any developments in this regard.

2. As regards the denial of freedom of association and the right to bargain collectively for workers in export processing zones (EPZs), the Committee notes the comments made by the Government in its report under Convention No. 87. It further notes the conclusions of the Committee on Freedom of Association in Case No. 1726 (294th Report, June 1994) concerning the non-application of labour legislation to EPZs and its recommendation that the 1992 Finance Act, the Export Processing Zones Authority Ordinance, 1980, and the Export Processing Zones Authority (Control of Employment) Rules be amended to ensure the right to organize and to bargain collectively for workers in these zones. It notes with interest the recommendation in the preliminary report of the tripartite Task Force on Labour that it would be desirable to apply labour laws uniformly without discrimination to all organizations. The Committee expresses the firm hope that the necessary measures will be taken to ensure that the provisions of this Convention are applied to EPZs and requests the Government to indicate the progress made in this regard in its next report.

Papua New Guinea (ratification: 1976)

The Committee notes with regret that for the second consecutive year the Government's report has not been received. It therefore repeats its previous observation which read as follows:

> The Committee had asked the Government to amend the national legislation which gives the authorities discretionary power to cancel arbitration awards or declare wages agreements void when they are contrary to government policy or national interest (section 42 of the Industrial Relations Act and section 52 of the Public Service Conciliation and Arbitration Act), contrary to *Article 4 of the Convention*.
>
> The Committee noted that the Government stated that due to the acute shortage of manpower in the relevant department the drafting of the amendments had not yet been attended to. Noting that the Government required the full-time input of an official to look into further amendments as well, the Committee considers that this is a case where the technical assistance of the ILO should be drawn on. It thus hopes that the Government will take up this offer as soon as possible and will be able to indicate in its next report that the necessary amendments have been tabled and adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Singapore (ratification: 1965)

The Committee notes the Government's report and the written information provided by the Government to the Conference Committee on the Application of Standards in June 1994.

The Committee recalls that its previous observations on inconsistencies between the national legislation and *Article 4 of the Convention* concerned the following points:

- a quantum limit on the amount of annual wage supplements (AWS) in new enterprises (section 48(3) of the Employment Act as amended in 1988);
- limitations on the scope of matters open to collective bargaining (section 17 of the Industrial Relations Act) (IRA); and
- discretion of the Industrial Arbitration Court to refuse to register collective agreements concluded in newly established enterprises (section 25 of the Industrial Relations Act).

1. The Committee notes the information provided by the Government concerning the historical development of the annual wage supplement and the fact that, over time, this payment became a contentious industrial relations issue in collective bargaining, the unions endeavouring to increase the payment while the employers wanted it to be discontinued; the resulting limit to one month's salary being agreed to as a compromise position. The Government adds that the removal of this limit would seriously undermine the "social contract" between the employers and trade unions to resolve this issue for the benefit of all. While the duration of the limit on the amount of AWS in "new enterprises" is not clear, the Committee stresses once again the importance it attaches to the development of machinery and procedures to facilitate bargaining and recalls that voluntary negotiation implies the autonomy of each party to the negotiation, without government interference or restrictions. The Government is requested to take steps to encourage voluntary negotiations between employers and workers on all matters, including the question of AWS in new enterprises.

2. In its previous comments, the Committee requested the Government to take steps to repeal the prohibition in section 17(2) of the IRA of negotiations relative to promotion, transfer, appointment, dismissal and assignment of duties. As the Government has not provided any further information on this point in its report, the Committee requests it to indicate, in its next report, the steps taken or envisaged to bring this provision into conformity with Article 4 of the Convention.

3. As concerns section 25 of the IRA, the Committee notes with interest the indication in the Government's latest report that the Industrial Arbitration Court, as in previous years, has not refused to certify any of the collective agreements in new enterprises which contained terms and conditions of service more favourable than Part IV of the Employment Act. The Committee however draws the Government's attention to paragraph 251 of the 1994 *General Survey on Freedom of Association and Collective Bargaining* which provides that legislation stipulating that collective agreements must be submitted for approval to the administrative authority or the labour tribunal before coming into force is compatible with Article 4 of the Convention, provided it *merely* stipulates that approval may be refused if the agreement has a procedural flaw or does not conform to the *minimum standards* laid down by the general labour legislation. The Committee requests the Government to indicate, in its next report, the steps taken or

envisaged to bring the legislation into conformity with its practice by limiting the requirement for prior approval of collective agreements in new enterprises under section 25(2) of the IRA, as indicated above, so as to ensure the autonomy of the parties to freely conclude collective agreements.

Sudan (ratification: 1957)

The Committee notes the Government's report as well as the detailed discussion which took place at the Conference Committee in June 1994.

In its previous observation, the Committee requested the Government to take measures to amend its legislation in view of the numerous and serious incompatibilities of the Trade Union Act of 1992 with the Convention, in particular, the lack of protection afforded to workers against acts of anti-union discrimination.

1. *Article 1 of the Convention.* The Committee notes that subsection 23(1) prohibits an employer from transferring any member of the central, preparatory or executive committees of unions from his workplace after election to trade union office if this transfer results in a loss of membership of the Committee; and from transferring any member to another geographical region or professional category during his term of office except with the agreement of the union or the Registrar General. Subsection 2 prohibits an employer from imposing any penalties on any such member for reasons linked to his trade union activities. The Committee further notes that under section 41, a violation of this provision constitutes an offence punishable by six months' imprisonment or a fine or both.

The Committee observes that section 23 requires that trade union officials enjoy a certain degree of protection against acts of anti-union discrimination in respect of their employment. This provision is defective, however, in that it only applies to trade union officials and not to *workers* in general. Moreover, under the terms of this provision, an employer may carry out the prohibited acts with the permission of the union or the Registrar General. The Committee would point out that (i) *Article 1* protects all union members from acts of anti-union discrimination; and (ii) this protection cannot be weakened by allowing an employer to carry out such acts with the authorization of the administrative authority or a union which is not independent.

The Committee would therefore request the Government to ensure that the Trade Union Act of 1992 is amended so that all trade union members, and not just officials, are protected against acts of anti-union discrimination and that employers may not carry out such acts against trade union officials with the agreement of the Registrar.

2. *Article 3.* The Committee recalls that the existence of basic legislative provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice, in line with Article 3, which stipulates that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize as defined in Articles 1 and 2. The Committee notes that the 1992 Act does not establish such machinery.

The Committee therefore requests the Government to make provision in the Trade Union Act for the setting up of impartial national machinery in conformity with Article 3.

3. *Article 4.* The Committee notes from the Government's report that section 11 of the Industrial Relations Act, 1976, provides that "if a labour dispute arises, the parties to the dispute must settle it within a period not exceeding two weeks by entering into amicable negotiations, provided that the duration of such negotiations must not exceed

three weeks as from the date of the beginning of the negotiations. The period of negotiations may be extended by two more weeks if the two parties so agree".

The Committee observes that this provision establishes a procedure of compulsory conciliation which can be extended if both parties agree. The Committee would request the Government to indicate, in its next report, whether the failure to reach agreement would result in compulsory arbitration at the request of one party leading to a final decision which is binding on both parties.

The Committee notes, moreover, that section 32(2) of the Trade Union Act of 1992 states that when any dispute arises before the Registrar General, his decisions — as far as the application of the Act is concerned — are binding on the parties and should be executed in the same manner as the provisions of the 1983 Civil Proceedings Law. While the decision of the Registrar General can be appealed within 30 days, the Committee would recall that Article 4 of the Convention aims at promoting and encouraging voluntary collective bargaining and that decisions involving compulsory arbitration should be confined to: (a) public servants exercising authority in the name of the State; (b) essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request such arbitration.

Sweden (ratification: 1950)

The Committee notes the information supplied by the Government in its report as well as the observations of the Swedish Employers' Confederation (SAF) and the Swedish Trade Union Confederation (LO). It also takes note of the oral information supplied by the Government to the Conference Committee in June 1993 and the discussion which took place there in relation to the comments presented by the Swedish Confederation of Professional Employees (TCO) concerning the 1990 amendments to the National Insurance Act and the 1991 Sick Pay Act.

The Committee notes that in reply to the TCO's comments that the legislation violated the right to conclude collective agreements concerning sick pay, the Government states that it has appointed a drafting committee to propose a new system of statutory insurance benefits in connection with illness and work injury, whereby insurance expenditure will not be included in the national budget. Among other things, the remit lays down that the recommendations put forward must conform with Sweden's commitments under international Conventions.

The Committee takes note of this information and recalls that it considers, like the Conference Committee, that the principle of autonomy of the parties involved in collective bargaining is important and that the public authorities in general should respect this autonomy and abstain from any intervention. It further considers that the Government should try to persuade the social partners to have regard voluntarily to major economic and social policy considerations and the general interest invoked by the Government, since persuasion is always preferable to any imposition.

The Committee expresses the hope that the recommendations of the drafting committee in respect of the new system of statutory insurance benefits will be in line with the above-mentioned principles and requests the Government, in its next report, to provide information thereon.

Syrian Arab Republic (ratification: 1957)

The Committee observes that the Government's report has not been received.

It none the less notes the request for clarification sent to the ILO by the Government concerning its comments on section 98 of the Syrian Labour Code under which the Minister may refuse to approve a collective agreement or to cancel any clause likely to harm the economic interests of the country.

As the Committee has already pointed out, only questions of form or of inconsistency with the minimum standards of labour law could justify such a system of prior approval. In this connection, the Committee suggests that the Government refer to its 1994 *General Survey on Freedom of Association and Collective Bargaining* which contains various proposals in this respect, including holding prior consultations on what the scope of the notion "public interest" should be, establishing joint bodies and drawing the attention of the parties to the economic policy objectives recognized as being in the public interest (see in particular paragraphs 251 to 253).

The Committee asks the Government to take the above proposals into consideration in amending section 98 of the Labour Code and to keep it informed of any measures taken in this respect.

Trinidad and Tobago (ratification: 1964)

The Committee notes with regret that for the second year in succession the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee noted the Government's communication of April 1991, whereby it indicated that, within the context of the current revision of the Central Bank Act, 1964, consideration was to given to the establishment of an appropriate mechanism to deal with the grievances of the Central Bank's employees, in the light of the representations made by the Staff Association of the Central Bank of Trinidad and Tobago. The Committee requests once again the Government to keep it informed of the developments in this respect.
>
> The Committee also referred to the comments it has been making since 1973 on the necessity to amend section 34 of the Industrial Relations Act, in order to allow minority unions unable to reach a membership of 50 per cent of the workers in a bargaining unit, to negotiate collectively employment conditions and to have the right to pursue individual grievances at least on behalf of their members. In its previous observation, the Committee noted that the Government proposed to solicit the views of the social partners on this matter and would keep the ILO informed. The Committee requests once again the Government to provide in its next report information on the result of said consultations and on any development in that respect, including measures taken by the Government to bring its legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1952)

The Committee notes the information supplied by the Government in its report and the discussions which took place at the Conference Committee in June 1994, as well as the comments of the Confederation of Turkish Trade Unions (TURK-IS).

The Committee recalls that for several years it has been commenting on the fact that trade unions may negotiate collectively only if they represent at least 10 per cent of the membership of the branch and more than 50 per cent of an establishment, that public servants are denied the right to bargain collectively and that arbitration is compulsory in collective disputes which are not a threat to essential services.

1. As regards the numerical requirements for a trade union to bargain collectively, the Committee notes the information provided by a Government representative to the Conference Committee and by the Government in its report according to which the removal of the requirement of at least 10 per cent of the membership of workers of a branch is still being studied in spite of the objections made by organizations of employers and workers.

The Committee reminds the Government that effective measures should be taken to reduce the numerical requirements from national legislation in order to allow the full development and utilization of machinery for voluntary collective bargaining, in accordance with *Article 4 of the Convention*.

2. With regard to the denial of collective bargaining rights of public servants, the Committee notes that the Bill on the right to organize of public servants and on their participation in the determination of their employment conditions is still before the competent Committee of the National Assembly.

The Committee recalls in this respect that the Convention only excludes public servants engaged in the administration of the State. It therefore requests the Government to take the necessary measures so that public servants who are not engaged in the administration of the State have the right to bargain collectively as soon as possible. It requests the Government to provide information on any progress made in this respect in its next report.

3. As regards compulsory arbitration, the Committee notes that the Government maintains its position that section 33 of Act No. 2822 imposing this arbitration is not in contradiction with the Committee's principles but that it is ready to take into consideration any concrete proposal from the Committee in this respect.

The Committee emphasizes once again that legislation should limit recourse to compulsory arbitration to essential services in the strict sense of the term. Consequently, in the Committee's view, section 33 of Act No. 2822 should only apply to services the interruption of which would endanger the life, safety and health of the whole or part of the population. The Committee therefore requests the Government to quickly take the necessary measures to limit the scope of section 33.

4. Taking into account the fact that the important problems presented in this observation have been raised for several years, the Committee considers it necessary to remind the Government that the assistance of the Office is at its disposal to facilitate the removal of the obstacles which are preventing the Convention from being fully applied.

5. Finally, the Committee notes that the Government has not provided its observations on the comments made by TURK-IS regarding the application of the Convention. The Committee requests the Government to provide its observations on this matter in its next report.

Yemen (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that for several years its comments have dealt with the following points:
>
> (a) the absence of specific and appropriate provisions, combined with effective and sufficiently dissuasive sanctions, to guarantee explicitly the protection of workers against any act of discrimination by employers, both at the time of recruitment and during

employment, and the protection of workers' organizations against acts of interference by employers, contrary to *Articles 1 and 2 of the Convention*.

(b) the absence of appropriate measures to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements, and the compulsory registration of collective agreements and the possibility of their cancellation in the event that they do not conform with the security and economic interests of the country (sections 68, 69 and 71 of the Labour Code), contrary to *Article 4* of the Convention, under which it is the responsibility of the Government to establish the appropriate procedures to associate the social partners on a voluntary basis in the determination of the Government's social and economic policy, and by virtue of which collective bargaining shall also be free and may not be subject to legal restrictions.

The Committee expresses the firm hope that the Government will be able to supply information in its next report on the measures which have actually been taken to bring its legislation into conformity with the requirements of the Convention and, in particular, to adopt the new Labour Code, the draft text of which was prepared with the technical assistance of the Office, and the new Bill respecting trade unions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Zaire (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. The Committee notes from the information supplied by the Government in its last report that the draft Code adopted by the National Labour Council contains specific provisions to protect employers' and workers' organizations from acts of interference by each other and provides for a strengthening of the penalties applicable to an employer who commits acts of anti-trade union discrimination in respect of employment.

The Committee would be grateful if the Government would supply the text of the revised Labour Code when it has been adopted by the competent authority.

2. In one of its previous comments, the Committee requested the Government to indicate whether the measures taken by the Executive Council to fix the rates of wage increases in public enterprises, to which it referred in a previous report, were still in force.

The Government pointed out that the right of free collective bargaining is recognized for these enterprises in accordance with section 266 of the Labour Code and sections 13 and 14 of the National Inter-Occupational Collective Agreement. According to the Government, wage increases in public enterprises are agreed upon through free collective bargaining between employers' organizations (or an individual employer) and workers' organizations on the basis of the minimum wage (SMIG) fixed by order of the President after consultation with the National Labour Council and at the proposal of the Minister concerned.

While noting this information, the Committee requests the Government to indicate the measures taken by the Executive Council as regards wages policy and to supply information on the manner in which the collective bargaining process in the public sector is carried out, including the number of collective agreements concluded and specifying the public servants (excluding those engaged in the administration of the State) whose terms and conditions of employment and wages are determined by collective bargaining.

The Committee hopes that the Government will provide the information requested in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Azerbaijan, Belize, Bulgaria, Colombia, Comoros, Croatia, Ethiopia, Guinea, Guinea-Bissau, Honduras, Indonesia, Mongolia, Saint Lucia.*

Information supplied by *Angola, Cameroon* and *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

United Kingdom (ratification: 1953)

The Committee notes that the denunciation of the Convention was registered by the Director-General on 16 August 1994 and will take effect on 16 August 1995. It notes the Government's statement in its report that continued ratification could make it difficult for the industry to adopt wage-fixing arrangements appropriate to its changing needs in the next century. It further notes the comments made by the Trades Union Congress (TUC) on the application of the Convention, forwarded by the Government.

According to the TUC, the Government has made it clear that it denounced the Convention in order to be free to abolish the Agricultural Wages Board (AWB), the body responsible for minimum wage fixing and conditions of employment in the industry.

The TUC has also submitted the following information:

- Consultation about the future of the AWB and the proposed denunciation of the Convention was undertaken purely by correspondence.
- At no time did the Government invite TUC or CBI representatives to meet to discuss the denunciation on a tripartite basis, nor were the TUC or the Transport and General Workers' Union's Rural, Agricultural and Allied Workers' Trade Group invited to discuss the future of the AWB, though a meeting was held at their request.
- The Government circulated a Consultative Document about the future of the Board. Only ten of the 3,566 respondents favoured abolition, the trade unions and employers being in favour of its retention.
- The Government announced, on 20 December after denunciation of the Convention, that it would not abolish the AWB at the present time.
- The National Farmers' Union — the employers' organization — had said that the Board was central to good industrial relations and effective career structures in the industry.

The TUC further states that it opposed the denunciation of the Convention and regrets that the Government went ahead.

The Committee takes due note of the above comments submitted by the TUC.

The Committee notes that, as long as the Agricultural Wages Boards, which set the minimum wage rates for farmworkers, are not abolished, substantial provisions of the Convention are still being complied with.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Grenada, Poland, Seychelles, Slovakia.*

Convention No. 100: Equal Remuneration, 1951

Germany (ratification: 1956)

1. In its previous observations, the Committee has referred to "light wage groups" (*leichtlohngruppen*) which had originated as explicitly female wage groups. The Committee noted that the wage classifications of women and men in a number of collective agreements tended to be differentiated mainly or solely according to the criterion of "physically light" versus "physically heavy" work, thus perpetuating the former wage differentiation expressly by gender. Following the April 1988 decisions of the Federal Labour Court which defined the term "light physical work" as work not devoid of muscle demand but also including other factors, such as the requirement to stand or to maintain certain positions, repetitive work, nervous strain and noise or the pulse rate of work and which concluded that the difficulty inherent in one and the same job should be calculated according to the respective strength of the man or woman performing the job, the Committee also noted the Government's indication that these decisions constituted steps towards the improvement of job classifications and equality of remuneration for women workers.

2. The Committee notes with interest a decision of 29 July 1992 of the Federal Labour Court on this point. In the case, a woman marking prices in the goods receipt department of a retail establishment claimed that, as her work generally required heavy physical effort, she ought to be classified in a higher wage step of the relevant collective agreement, a step reserved for jobs which, as a rule, required some significant degree of physically heavy work. In its decision confirming the reclassification, the Federal Labour Court stated that the characteristics of "heavy physical work" in the collective agreement in question did not refer exclusively to the muscular demand placed on the worker, but rather referred to all factors which placed a demand on the worker and led to physical reactions (such as the posture necessary, time-controlled or repetitive work, nervous or sensory stress, noise and other environmental and social factors). In the view of the Court, the principle of equal wages permits a graduation in wages determined exclusively according to muscular demand only if the overall wage system also includes compensatory factors which are more associated with the female sex.

3. The Committee also notes the information supplied on the latest developments with regard to "light wage groups" in the "Ninth Report of the Federal Government on the kind, scope and outcome of the objections made by it or by the Governments of the Länder concerning the application of Article 119 of the EEC Treaty on equal pay for men and women" (Report to Parliament No. 12/4033 of 21 December 1992). According to this report, the survey of collective agreements has shown that the parties to such agreements need to make further efforts in examining those jobs in which classifications turn, almost exclusively, on physical effort. However, states the report, the mere presence of "light wage groups" in collective agreements does not indicate whether or not the work of women is in fact undervalued in the respective occupational sphere. If, however, collective agreements also take into account sensory and nervous strain or similar mental stresses, many of the so-called "women's jobs" — precisely those which, while "physically light", involve mental or nervous strain — will have to be classified in higher wage groups. In its report, the Government states that the most recent jurisprudence of the Federal Labour Court ensures that a higher classification can be obtained for jobs which, while physically lighter, involve mental and nervous strain; and that following, in particular, the above-mentioned ruling, "physically arduous work",

which is better paid, also includes jobs which involve not only muscular but other strain on human beings which can result in physical reactions.

4. In the light of these indications, the Committee requests the Government to provide information on the extent to which measures are being taken, or are envisaged, to ensure that job evaluation and classification include criteria which are associated more often with the work performed by women, particularly in respect of those collective agreements where wages are differentiated mainly or only through the application of the criterion of physically "light" versus "heavy" work. The Committee also requests the Government to indicate the extent to which "physically lighter" jobs have been reclassified into higher wage categories through evaluations that take into account all of the factors which produce physical reactions on workers.

5. The Committee is addressing a request directly to the Government on other points.

Guyana (ratification: 1975)

The Committee notes with satisfaction that section 24(2)(f) of the Factories Act (which empowered the Minister of Labour to issue regulations establishing different rates of remuneration for men and women and young persons for overtime work) has been amended by the Equal Rights Act, 1990 to substitute the word "adults" for the words "men and women".

India (ratification: 1958)

The Committee notes the information contained in the Government's report.

1. In previous comments, the Committee had observed that the scope of the principle of equal pay under section 4 of the Equal Remuneration Act 1976 was limited to men and women performing the same work or work of a similar nature for the same employer. The Committee recalls the Government's statement that the introduction of the concept of equal pay for work of equal value may not be possible at the present stage of development and that priority should be given instead to the full implementation of the provisions of the Equal Remuneration Act. In its present report, the Government states that the Act ensures equal remuneration to men and women for work which is of equal value to the same employer and that "it is neither possible nor necessary for legislation alone to meet the principles of the Convention". It also states that other options identified in the Convention itself may be expected to play the complementary role. In this regard, the Committee notes the Supreme Court decision in the case of *D'Costa v. MacKinnon MacKenzie and Company* which indicates that the scope of the Equal Remuneration Act is indeed more limited than that of the principle of the Convention (Supreme Court Cases (1987) 2 SCC pp. 469-482). The Supreme Court stated that discrimination arose only where men and women doing the same or a similar kind of work were paid differently. The Court distinguished this situation from that where men and women carried out different kinds of work, by stating that, in respect of the work done by men which women may not be able to undertake such as loading, unloading, carrying and lifting heavier things, there cannot be any discrimination on the ground of sex (page 478).

2. The Committee considers that, where equal pay legislation exists, it must be consistent with the principle set out in the Convention. Apart from seeking to determine whether national legislation provides a framework sufficient to ensure the application of the principle of equal pay, as enunciated in the Convention, the Committee also regularly requests information from ratifying States concerning the ways in which the principle of

equal pay for work of equal value is ensured and promoted in practice, according to the provisions of the Convention. In the present case, the Committee requests the Government to provide full information in its next report on the effect given, in practice, to the provisions of the Convention in the hope that the Government is considering measures to ensure the application of the principle of the Convention which go beyond a reference to "the same" or "similar" work, and make the point of comparison the "value" of the work.

3. In the comments it has made for a number of years, the Committee has also sought to encourage the Government to improve the enforcement of the Equal Remuneration Act 1976, as there appeared to be numerous cases in which women received lower wages than men for equal work or for work of equal value. The Committee had noted that, according to the Centre of Indian Trade Unions (CITU), there were many shortcomings in the implementation of the Act; and that, in certain industries, employers used a piece-rate system to avoid paying equal wages for women or they claimed that the work performed by women was of a different nature to that performed by men, whereas the nature of the work was the same or similar. The Committee had also referred to a number of studies undertaken by the Labour Bureau of the Ministry of Labour in the late 1980s on the socio-economic conditions of women workers in various industries, which confirmed that the Act was circumvented frequently by employers.

4. The Committee notes the Government's explanation in its present report concerning the fixing of wage rates for piece-work, including the fact that the system is limited to certain types of employment or to particular processes where it is feasible and is needed to provide flexibility in view of the nature of the job and to enhance productivity. The Committee hopes that the Government will provide, in its next report, some indication (even by way of a representative statistical sample) of the proportion of men and women in the particular industries or jobs for which piece-rates are fixed, together with information on the average wages (differentiated by sex) received by those workers, as compared to time-rate workers. As concerns this question, the Committee wishes to determine the extent to which the wage rates of women workers are fixed according to their productivity. The Committee also hopes that the Government's next report will contain information on the action taken by the relevant state governments to rectify the instances of wage discrimination identified in the above-mentioned studies of the Labour Bureau.

5. Also in relation to its previous observations, the Committee notes that a scheme for strengthening the enforcement machinery for legislation relating to women and children was transferred to state governments under the 8th Five-Year Plan (1992-97). In addition, a process of active consultation has been initiated with both the workers' and employers' organizations at the central level to secure their support for better implementation of the legislation. The Committee again requests the Government to supply specific information on the way these initiatives have furthered the implementation of equal pay.

6. The Committee notes that, following the Central Government's recognition of four social welfare organizations as having competence to file complaints under the Equal Remuneration Act, all state governments have been requested to extend recognition to appropriate organizations for the same purpose. The Committee would be grateful if the Government would indicate the names of the organizations that have been so recognized by the states. It also requests the Government to indicate the measures taken to educate and inform representatives of these organizations about the concept of equal pay, including information on the requirements of the Convention. The Committee

takes this opportunity to remind the Government that technical assistance, including the provision of material designed to explain the provisions of ILO standards, is available from the International Labour Office.

7. The Committee is addressing a request directly to the Government on other points.

Jamaica (ratification: 1975)

The Committee notes with regret that, for the third consecutive time, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its 1991 observation, the Committee had noted that the Minimum Wage (Printing Trade) Order, 1973, which had provided for sex-differentiated job categories and pay scales had been revoked by the Minimum Wage (Printing Trade) Order, 1989, which had set a single rate of pay for an unskilled worker. However, in other respects the Order had simply removed explicit reference to the sex of the worker from various other categories, while at the same time maintaining both the former definitions of those categories and differentials in the respective increased minimum rates which appeared to correspond to those laid down in the 1973 Order. In the absence of any indication that measures were taken either to evaluate and compare jobs in categories which were formerly sex-denominated by applying non-discriminatory criteria or to ensure that those jobs were open to both sexes, the Committee had been forced to conclude that the wage distinctions based on sex in the 1973 Order had been maintained in the 1989 Order, despite the introduction of neutral language. The Committee had requested the Government to supply detailed information on the measures taken, either alone or in cooperation with the social partners, to ensure the application of the principle of the Convention in the printing trade as well as in other industries, such as the garment-making trade, where the Committee had previously noted that distinctions based on sex had apparently played a role in establishing differential minimum wage rates.
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> At the Conference Committee in 1991, the representative of the Government stated that the tripartite Minimum Wage Advisory Commission would review the Minimum Wage Orders for the printing and garment industries before the end of 1991 and, in doing so, would take account of the Committee's comments regarding the application of the Convention. He assured the Committee that a comprehensive report, as well as copies of the new Orders, would be furnished as soon as this work had been completed.
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> The Committee notes that no further reference is made in the report of the Government to the review of the above-mentioned Orders. The Committee trusts that the Government will indicate, in the near future, that it has taken the necessary action to ensure conformity with the provisions of the Convention.
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> 2. In its previous direct request, the Committee had pointed out that section 2 of the Employment (Equal Pay for Men and Women) Act, 1975, only refers to "similar" or "substantially similar" job requirements, whereas the Convention provides for equal remuneration for work of "equal value", even of a differnt nature. The Committee notes that the Government has provided no information on the measures taken or envisaged to re-examine national legislation in the light of the requirements of the Convention. The Committee trusts that full information will be provided in this regard in the next report.
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> 3. In its previous comments, the Committee had noted that minimum wage orders generally exclude any ancillary benefits from their scope, while the Convention, as well as the above-mentioned Act include in their scope any additional emolument whatsoever payable in cash or in kind to the worker in respect of work or services performed. The Committee had therefore requested the Government to indicate how, in practice, equal remuneration is implemented with respect to benefits such as housing, marriage or family allowances, in both the private and public sectors. The Committee notes the statement of the Government in its

report that there is equal remuneration in both the private and public sectors with respect to the benefits paid or granted in addition to salary.

The Committee, however, notes from the Government's report that while the payment of marriage allowances was discontinued during the 1970s, teachers who were receiving the allowance prior to its discontinuation have continued to receive it. Male teachers who fall into this category receive an allowance of $2,400 per annum.

The Committee points out that the continuing payment of marriage allowances to, it would appear, only male teachers who had entitlement to them prior to their discontinuation is contrary to the provisions of the Convention. It therefore requests the Government to ensure that those female teachers who were also employed prior to the date of discontinuance of the allowance but who were denied it on account of their sex are also granted a marriage allowance.

More generally, the Committee requests the Government to take the necessary steps to ensure that minimum wage orders and any regulations fixing wages for the public sector cover not only cash minimum wages but also any additional emoluments payable in cash or in kind.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nepal (ratification: 1976)

1. The Committee notes with regret that the Government's report has not been received. It notes that the principle of the Convention was not explicitly included in the Labour Code of 15 May 1992 and that the Labour Rules of 8 November 1993 (section 11) proscribe discriminatory remuneration between male and female workers only where they are engaged in work "of the same nature in an establishment".

2. Recalling that in its previous observations the Committee had noted that article 11(5) of the 1990 Constitution proscribes discrimination between men and women in regard to remuneration "for the same work", a concept narrower than that used in *Article 2, paragraph 1, of the Convention*, the Committee asks the Government to supply details in its next report on how the principle of equal remuneration for work of equal value between men and women is applied where the work is different. In this connection, the Committee notes that concern has been expressed by the United Nations Human Rights Committee, in the context of its examination of Nepal's application of the International Covenant on Civil and Political Rights, over discrimination against women in the field of wages [CCPR/C/79/Add.42 of 4 November 1994]. The Committee recalls once again that in its 1990 General Observation on this Convention, it emphasized the importance of ensuring the legislative application of the Convention. The Committee hopes that the Government will take all necessary measures to ensure that sex-based discrimination in remuneration is prohibited also for work of equal value.

3. In its previous observation the Committee had noted with interest that the Government had requested ILO advice and technical cooperation on job evaluation and on other matters relevant to the effective implementation of the Convention. Observing that the report on the ILO mission undertaken in this context (transmitted to the Government in February 1993) contained several recommendations for facilitating the implementation of the Convention, the Committee asks the Government to inform it, in its next report, of the measures taken or envisaged to act on these recommendations aimed at applying the provisions of the Convention.

4. The Committee would appreciate receiving details on the functioning of the newly established Minimum Remuneration Determination Committee, in particular its

recommendations under section 21(3) of the Labour Act concerning "other facilities", given that section 2(r) of that Act defines "remuneration" to exclude "allowances or facilities of any kind", and that *Article 1(a)* of the Convention defines "remuneration" to include any additional emoluments whatsoever.

Spain (ratification: 1967)

1. The Committee notes with satisfaction the adoption of the amendment to section 28 of the Workers' Charter 1980, which reads: "For the performance of work of equal value the employer shall pay the same wage, for both the basic wage and emoluments, without any discrimination on grounds of sex", and which is in conformity with *Article 2 of the Convention*.

2. The Committee is addressing a request directly to the Government concerning certain other points.

Sweden (ratification: 1962)

1. The Committee notes the information provided by the Government in its report, including the detailed statistical data, as well as the comments of the Swedish Council of Local Authorities and the Federation of Swedish County Councils.

2. While the Swedish Council of Local Authorities confirms the information in the Government's report concerning the 1993 Outline Agreement on Rates of Pay, etc. for National Government Employees which imposes on the parties at local level a special duty to ensure that pay differentials between women and men are gender neutral, the Federation of Swedish County Councils criticizes the statistical methodology and statistical analysis concerning county council employees. It considers that because the pay tables supplied by Statistics Sweden lack particulars of occupation, duties or age, they cannot be used to assess pay differentials between men and women in relation to education, actual work done and age. The Committee notes, however, that the Government's report does contain pay statistics for county council employees by educational level. This is supplemented by the statistics in the report which the Government commissioned from Statistics Sweden, entitled "Top salaries", which shows the average salary of women managers in county councils as a percentage of men's salaries, taking into consideration men's and women's dissimilarities in age and education through "standard weighting". These figures show that even accounting for differences in age and education, female managers in county councils continue to earn only 79 per cent of the salary of males occupying the same positions, compared to 86 per cent and 89 per cent at the level of central government and municipalities respectively.

3. The Committee welcomes the extracts of recently concluded collective agreements, supplied by this employer body, which include equal opportunities provisions. This confirms the information provided in the Government's report concerning the efforts, along the lines of *Article 4 of the Convention*, to promote the application of the principle of equal remuneration for work of equal value and to decrease the gaps noted above. The Government's report mentions, in particular, agreement at the level of national government employment for joint efforts towards developing systems for comparing equivalent jobs which resulted in the "TNS" (Tjangsgoringsnomenklatur for staten) classification system; the publication of gender-related TNS-based statistics for the first time in 1992; and the testing of local job evaluation systems against the "equal value" concept, to be evaluated by the parties at the central level. Measures such as these help, in the Committee's opinion, to promote

the implementation of *Article 1* of the Convention. The Committee looks forward to receiving follow-up information on the central-level evaluations, promised for the Government's next report on this Convention.

4. The Committee is addressing a request directly to the Government on other points.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Afghanistan, Algeria, Azerbaijan, Bulgaria, Burkina Faso, Cameroon, Central African Republic, Chad, China, Comoros, Cyprus, Czech Republic, Djibouti, Dominica, Equatorial Guinea, France, Gabon, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Israel, Italy, Jamaica, Jordan, Kyrgyzstan, Libyan Arab Jamahiriya, Malawi, Mongolia, Mozambique, Nicaragua, Russian Federation, Saint Lucia, Sao Tome and Principe, Slovakia, Spain, Sweden, Togo, Tunisia, Turkey, Zaire.***

Convention No. 101: Holidays with Pay (Agriculture), 1952

Cuba (ratification: 1954)

The Committee requests the Government to refer to the comments that it has made under Convention No. 52.

Ecuador (ratification: 1969)

For several years, the Committee has commented that sections 73 and 74 of the Labour Code contravene *Articles 1, 3 and 8 of the Convention*. Specifically, section 73 authorizes employers to refuse leave during one year in certain cases, and section 74 permits workers to postpone leave for three consecutive years so as to accumulate it in the fourth year.

In its latest report, the Government does not refer to the application of the abovementioned Articles of the Convention. Consequently, the Committee must once again reiterate that under Articles 1 and 3 of the Convention, agricultural workers must be granted an *annual* holiday of a specified minimum duration and that, according to Article 8, any agreement to relinquish the right to annual holiday or forego such a holiday would be void. The Committee therefore trusts that the Government will amend sections 73 and 74 of the Labour Code on the points mentioned above in order to bring the national legislation into conformity with the Convention.

[The Government is asked to report in detail in 1996.]

Peru (ratification: 1960)

The Committee requests the Government to refer to the comments that it has made under Convention No. 52.

United Kingdom (ratification: 1956)

The Committee notes that the denunciation of the Convention was registered by the Director-General on 16 August 1994 and will take effect on 16 August 1995. It notes the Government's statement in its report that continued ratification could make it difficult for the industry to adopt wage-fixing arrangements appropriate to its changing needs in the next century. It further notes the comments made by the Trades Union Congress (TUC) on the application of the Convention, forwarded by the Government.

According to the TUC, the Government has made it clear that it denounced the Convention in order to be free to abolish the Agricultural Wages Board (AWB), the body responsible for minimum wage fixing and conditions of employment in the industry.

The TUC has also submitted the following information:

— Consultation about the future of the AWB and the proposed denunciation of the Convention was undertaken purely by correspondence.

— At no time did the Government invite TUC or the Confederation of the British Industry (CBI) representatives to meet to discuss the denunciation on a tripartite basis, nor were the TUC or the Transport and General Workers' Union's Rural, Agricultural and Allied Workers' Trade Group invited to discuss the future of the AWB, though a meeting was held at their request.

— The Government circulated a Consultative Document about the future of the Board. Only ten of the 3,566 respondents favoured abolition, the trade unions and employers being in favour of its retention.

— The Government announced, on 20 December 1995 after denunciation of the Convention, that it would not abolish the AWB at the present time.

— The National Farmers' Union — the employers' organization — had said that the Board was central to good industrial relations and effective career structures in the industry.

The TUC further states that it opposed the denunciation of the Convention and regrets that the Government went ahead.

The Committee takes due note of the above comments submitted by the TUC.

The Committee considers that until 16 August 1995, the Convention remains applicable, and further notes that, as long as the Agricultural Wages Board, which sets the rules for holidays with pay for farmworkers, is not abolished, the substantial provisions of the Convention remain complied with.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, New Zealand, Sierra Leone, Swaziland, United Republic of Tanzania*.

Information supplied by the *United Kingdom* in answer to a direct request has been noted by the Committee.

Convention No. 102: Social Security (Minimum Standards), 1952

Germany (ratification: 1958)

Part XIII (Common provisions), Article 69(i), of the Convention. In its previous comments concerning the suspension of unemployment benefit in the event of trade disputes, the Committee requested the Government to supply information on the manner in which sections 116 and 133, last subsection, of the Federal Employment Promotion Act are applied in practice and to provide copies of any rulings issued by the Neutrality Committee, as well as of any rulings concerning the constitutionality of section 116 of the Act. In this respect the Committee notes the communication, dated 12 December

1994, received from the German Confederation of Trade Unions (DGB) which refers to a judgement of the Federal Social Court of 4 October 1994 concerning the application of section 116 of the above-mentioned Act; according to the DGB, this judgement would have an adverse effect on the application of the Convention. This communication was transmitted by the Office to the Government for observations. In its reply received on 18 January 1995, the Government states that it was not possible to provide information at the present time on the substance of the matter, since the grounds of the judgement of the Federal Social Court are not yet known. The Government adds that as the question of constitutionality of section 116 of the Federal Employment Promotion Act has now been brought before the Constitutional Court, it is unable to indicate when any further information would be available. The Committee takes note of this statement. It hopes that the Government will be able, in its next detailed report, at the latest, to provide full information on the practical application of the aforementioned sections of the Federal Employment Act, including on the matters raised by the DGB, together with copies of the relevant judicial decisions.

Peru (ratification: 1961)

I. 1. *Private pension system.* The Committee notes the new legislation establishing a private system for the administration of pension funds (SPP). It has examined in particular Legislative Decree No. 257897 of 27 November 1992 establishing the private system for the administration of pension funds, Presidential Decree No. 206-92-EF issuing the regulations governing the private pension system, dated 6 December 1992, Presidential Decree No. 220-92-EF approving the conditions of service of the Superintendency of Private Administrations of Pension Funds, dated 21 December 1992, and Decision No. 141-93-EF/SAFP of 27 August 1993, as amended, approving Title VII of the Compendium of Superintendent's Standard, which regulates the system of pension fund administrations (AFP) with regard to benefits.

The Committee notes that the national social security pension scheme, administered by the Peruvian Social Security Institute (IPSS), will continue to remain in force for persons who are currently insured by it, unless they opt to become members of the new private pension schemes. It also notes that new arrivals on the labour market theoretically have the option to be covered by either of the above schemes. Once they are insured by a pension fund administration, workers can no longer return to the national IPSS scheme. All persons insured under a pension fund administration of their choice pay a contribution equivalent to 10 per cent of their insurable income, which may not exceed a certain ceiling. There are no compulsory contributions for employers. Once the pension fund administrations have deducted their commissions, they invest the funds and keep a separate account for each worker. Upon retirement, the persons concerned obtain, in exchange for the sums which have been accumulated, a benefit which may take one of the four following forms: a programmed retirement benefit; a personal lifetime annuity; a family lifetime annuity; or a temporary annuity with a deferred lifetime annuity. Workers who are covered by the private pension system may also benefit from invalidity and survivors' benefits, as well as burial expenses.

After analysing the various above texts, the Committee considers that the new private pension system raises a number of questions with regard to the application of the Convention in relation to the following points.

Part V (Old-age benefit), Articles 28 and 29, paragraph 1, of the Convention (in relation to Article 65). In accordance with section 100 of Presidential Decree No. 206-92-EF, of 6 December 1992, all forms of old-age pensions are determined on the basis of the balance of individual capital accumulation accounts. These are established under the terms of section 19 of Legislative Decree No. 25897 of 27 November 1992, in particular from: the compulsory and voluntary contributions made by insured persons; the voluntary contributions made by employers; the actual value of attributed periods of contribution; capital gains and other earnings from the balance in individual capital accumulation accounts; the amounts of invalidity and death benefits. In exchange for these services, pension fund administrations earn a commission (section 24 of the above Legislative Decree).

The rate of the pensions provided is not therefore determined in advance, since it depends on the capital accumulated in individual accounts, and particularly on the earnings from those accounts. In this respect, the Committee recalls that, in accordance with Article 29, paragraph 1, in conjunction with Articles 28 and 69 of the Convention, an old-age benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency in accordance with prescribed rules, a qualifying period which may be 30 years of contribution.

The Committee therefore requests the Government to provide the statistics requested under Article 65 (Titles I and III) of the report form adopted by the Governing Body in order to enable it to make a full evaluation of the extent to which the old-age benefit, in all cases and irrespective of the type of benefit selected, attains the level prescribed by the Convention.

Article 30. The Committee notes that under the terms of sections 42 and 43 of Legislative Decree No. 25897 of 27 November 1992, workers insured under the private pension system may opt to receive their pension in the form of a "programmed retirement", under which they may make monthly withdrawals until the exhaustion of the capital accumulated in their account. In view of the fact that, in accordance with Article 30 of the Convention, the benefit has to be granted throughout the contingency, the Committee hopes that the Government will be able to indicate in its next report the measures which have been taken or are envisaged to give full effect to this provision of the Convention.

Part IX (Invalidity benefit), Article 58. The Committee notes that, by virtue of section 112 of Presidential Decree No. 206-92-EF, dated 6 December 1992, in the event of permanent total invalidity, workers may opt to benefit from the system of early retirement established under section 40 of Legislative Decree No. 25897, or for the form of pension established under section 42. Since the programmed retirement, as provided for in section 43 of the above Legislative Decree, is included among these forms of benefit, the Committee refers to its comments under Article 30.

Part XIII (Common provisions), Article 71, paragraph 1. The Committee notes that the cost of the benefits and certain administrative expenses in the context of the private pensions system are at the expense of the individual capital accumulation account of workers insured under the pension fund administration of their choice. Furthermore, certain commissions have to be paid directly by the worker concerned. The only contributions which are compulsory are those of workers to their individual account (composed principally of a contribution equivalent to 10 per cent of the insurable remuneration), while employers only contribute on a voluntary basis (see, among others, sections 24, 30, 31 and 32 of Legislative Decree No. 25897 of 27 November 1992, and sections 97 and 100 of Presidential Decree No. 206-92-EF of 6 December 1992). The Committee recalls in this respect that, in accordance with Article 71, paragraph 1, of the Convention, "the cost of the benefits ... and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected". The Committee requests the Government to indicate the measures which have been taken or are envisaged to give full effect to the Convention in this respect.

Article 71, paragraph 2. The Committee recalls that, by virtue of the provisions of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. In order to be in a position to assess the effect given to this provision of the Convention, the Committee requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for the whole of Peruvian social security for the Parts of the Convention which have been accepted, with the exception of employment injury benefit, with regard both to the private pension and health systems (when the health system comes into force) and the schemes administered by the IPSS.

Article 72, paragraph 1. The Committee request the Government to indicate the measures which have been taken or are envisaged, in the context of the private pension system, to give effect to this provision of the Convention which states that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions.

2. *System of pensions administered by the IPSS. Part V (Old-age benefit), Article 29, paragraph 2.* The Committee notes that, by virtue of section 1 of Legislative Decree No. 25967 of 7 December 1992, no person insured under the pension schemes administered by the Peruvian Social Security Institute may obtain the grant of an old-age pension if he has not paid contributions for a minimum period of 20 full years. Such a requirement is not compatible with Article 29, paragraph 2(a), of the Convention, which states that a reduced benefit shall be secured at least to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment. The Committee requests the Government to supply detailed information the measures which have been taken or are envisaged to give full effect to this provision of the Convention.

Part XI (Standards to be complied with by periodical payments), Article 65, paragraph 10. With reference to its previous comments, the Committee wishes to remind the Government of the importance that it attaches to the application of this provision of the Convention, which requires the adaptation of the rates of current periodical payments in respect of long-term benefits to fluctuations in the cost of living or the general level of earnings. The Committee hopes that, in accordance with the assurances given previously, the Government will be able to indicate the measures which have been adopted in practice to ensure the adjustment of old-age and invalidity benefit, in accordance with section 31 of Act No. 24-786 of 14 December 1987. It also requests the Government to supply the statistics required by the report form under Article 65, Title VI.

II. The Committee notes the information provided by the Government in its report on Convention No. 24 relating to the new private health system introduced by Legislative Decree No. 718 of 8 November 1991. The Committee notes that, with regard to medical assistance and sickness benefit, Legislative Decree No. 718 of 1991 only contains provisions of a general nature in Chapter IV. In particular, it provides that in the contract concluded between an organization providing health services and the persons covered, the parties shall agree freely to the manner and conditions under which benefits are provided, although a number of matters must be determined, such as: the benefits and other forms of compensation covered by the contract, including the percentages of coverage, the basic amounts and any ceiling to cash benefits; the waiting periods; and any exclusions from the above benefits.

However, the Committee notes that the private health system, which is established in the context of article 14 of the Constitution of Peru, will come into force on the date of the adoption of the regulations under Legislative Decree No. 718.

The Committee therefore hopes that the Government will be able to take the necessary measures to supplement Legislative Decree No. 718 of 1991 before it comes into force, for example on the occasion of the adoption of the regulations provided for under section 33 of the above Legislative Decree, so as to give full effect to the provisions of Parts II, III and VIII of the Convention (in conjunction with Parts I, XI, XII and XIII), particularly with regard to the conditions for the grant and the duration of the benefits, as well as the nature of medical benefits and the level of benefits in cash.

The Committee also refers to the comments that it has made in its observation concerning the application of Convention No. 24.

III. The Committee notes the various communications from occupational organizations (in particular, the Trade Union of Dockworkers of the Major Coastal Navigation of Callao, the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao, the Association of Employees and Retired Employees of the "Electrolima", the Trade Union of Workers of the "Mercado del Pueblo SA") alleging, among other matters, the non-payment of social security benefits due to workers on the grounds of the liquidation of their fund as a result of its bankruptcy, the bankruptcy of the employer or the non-payment of contributions, as well as the ineffective appeal procedures and the absence of adjustment of benefits. It also notes the Government's reply to certain of these communications, and particularly the assurances given that the interests of the workers will be protected and obligations towards them will be respected. The Committee recalls that, in accordance with Article 71, *paragraph 3*, of the Convention, the State must accept general responsibility with regard to the provision of social security benefits and has to take all the measures required for this purpose, and that in accordance with Article 72, *paragraph 2*, it has to ensure the proper administration of the institutions and services concerned in the application of the Convention. The Committee requests the Government to continue supplying detailed information on the measures taken in practice to ensure that full effect is given to these fundamental provisions of the Convention, in accordance with the assurances that it has given.

IV. With reference in particular to the communication transmitted on 13 April 1994 by the Latin American Central of Workers (CLAT), and taking into account the fact that this matter was subsequently the object of a representation made by the CLAT under article 24 of the Constitution in respect of the Government of Peru, the Committee has decided to postpone its examination of this question until the adoption of the report of the tripartite committee set up by the Governing Body to examine the representation.

The Committee requests the Government to provide detailed information in its next report on all the matters raised in this observation and in the request that it is addressing directly to the Government.

Spain (ratification: 1988)

The Committee notes the Government's report. It also notes the comments on the application of the Convention made by the General Union of Workers (UGT) which were supplied by the Government, together with its reply to them. The Committee decided to examine this information, which was received 12 January 1995, at its next session in November-December this year.

United Kingdom (ratification: 1954)

The Committee notes the detailed information supplied by the Government in its report and the attached texts of laws and regulations. The Committee also notes, from the information supplied to the Council of Europe in the Government's twenty-sixth annual report on the application of the European Code of Social Security, the various changes which are planned or have been decided upon by the Government respecting sickness insurance, unemployment insurance and old-age insurance. It hopes that the above changes will not affect the proper application of the Parts of the Convention that have been accepted. It requests the Government to provide detailed information in its next report on the implementation of these reforms, as well as information on the new incapacity benefit which will replace sickness benefit and on the jobseeker's allowance.

The Committee also notes the comments made by the Trades Union Congress (TUC), which were transmitted by the Government with its communication dated 1 February 1995 and which concern the application of *Article 69(f) and (i) of the Convention*, in relation to unemployment benefit (Part IV). Under these provisions, benefit may only be suspended where the contingency has been caused by the wilful misconduct of the person concerned or when the person has left the employment voluntarily without just cause. As these and certain other matters were raised in its previous comments, the Committee has examined them in a new direct request. The Committee therefore requests the Government to refer to the above request.

[The Government is asked to report in detail by 1 September 1995 at the latest.]

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In addition, requests regarding certain points are being addressed directly to the following States: ***Belgium, Peru, United Kingdom, Zaire.***

Convention No. 103: Maternity Protection (Revised), 1952

Austria (ratification: 1969)

Article 6 of the Convention. (a) Further to its previous comments, the Committee notes with interest the adoption of the amendment to the Maternity Protection Act which postpones the termination of temporary employment contracts for pregnant women, unless the temporary nature of the contract is objectively justified or provided for by law, thus giving better effect to the provisions of the Convention. The Committee also notes that similar revisions will be introduced in the near future for the Agricultural Labour Act. It requests the Government to indicate any developments in this regard.

(b) The Committee notes the information provided by the Government on court rulings which strengthen the protections for pregnant women against unfair dismissal. However, the Committee notes that, under sections 10 and 12 of the Maternity Protection Act and sections 102 and 103 of the Agricultural Labour Act, dismissal of pregnant women, subject to consent of the court, is still possible under certain circumstances. The Committee recalls that Article 6 of the Convention prohibits the employer from giving a woman notice of dismissal during her absence on maternity leave or at such a time that the notice would expire during such absence. Therefore, the Committee reiterates its hope that the necessary legislative measures will be taken to amend the aforementioned provisions so as to give full effect to this Article of the Convention.

* * *

In addition, a request regarding certain points is being addressed directly to *Guatemala*.

Convention No. 105: Abolition of Forced Labour, 1957

Algeria (ratification: 1969)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation which read as follows:

> *Article 1(a) of the Convention.* In comments it has been making for many years, the Committee has referred to the provisions concerning the right of association, under which sentences of imprisonment involving compulsory labour may be imposed in the circumstances covered by the Convention.
>
> The Committee has referred to Ordinance No. 71-79 of 3 December 1971 and Act No. 87-15 of 21 July 1987 which have been repealed, the former by Act No. 87-15 and the latter by Act No. 90-31 respecting associations, promulgated on 4 December 1990. In its previous observation the Committee referred to Act No. 89-11 of 5 July 1989 respecting associations of a political nature.
>
> The Committee noted that under section 5 of Act No. 90-31 any association whose objectives are contrary to the established institutional system, the public order, morals or existing laws or regulations shall be legally non-existent and, under section 45 of the same Act, any person who directs, administers or agitates in an association that is not recognized or that has been suspended or dissolved, or who facilitates the meetings of members of an association that is not recognized or has been suspended or dissolved, shall be punished by a penalty of imprisonment of from three months to two years.
>
> The Committee observes that sections 2 and 3 of the Interministerial Order of 26 June 1983 prescribing the procedure for the utilization of prison labour by the National Agency for Educational Work, provide that, unless exempted on medical grounds, convicted prisoners (without distinction as to the nature of the conviction) shall be required to perform useful work as part of their re-education, training and social development.
>
> The Committee observes that, despite the adoption of new legislation on associations, the discrepancies between the national legislation and the Convention, to which the Committee has been referring for several years, have not been eliminated.
>
> The Committee recalls once again that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.
>
> The Committee also recalls that the protection afforded by the Convention is not confined to activities expressing or manifesting divergent opinions in the framework of established principles. Consequently, if certain activities are aimed at making fundamental changes in the institutions of the State, this does not constitute a reason for considering that such activities are outside the protection afforded by the Convention, provided that they do not involve the use of, or incitement to, violent methods to bring about that result.
>
> The Committee has requested the Government on several occasions to take the necessary steps to ensure observance of the Convention either by lifting the restrictions on the right of association or by exempting from prison labour persons who are sentenced for breach of the

laws on associations or, more generally, for political offences, and who have not committed acts of violence.

The Committee has noted from the information in the Government's report for 1989-91 that work was in process at the Ministry of Justice to harmonize the above-mentioned Interministerial Order of 26 June 1983 with international Conventions. The Committee trusts that the necessary measures will be adopted in the near future to ensure observance of the Convention and asks the Government to report on progress in this matter.

The Committee also asks the Government to provide information on the practical effect given to sections 3, 5, 6 and 36 of Act No. 89-11 and sections 5 and 45 of Act No. 90-31, particularly with regard to convictions handed down under these provisions, and to provide copies of the corresponding court decisions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cameroon (ratification: 1962)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation which read as follows:

1. *Article 1(a) of the Convention.* The Committee notes Decree No. 90-1459 of 8 November 1990 to set up the National Commission on Human Rights and Freedoms. The Committee also notes the following Laws adopted on 19 December 1990: Law No. 90-46 to repeal Ordinance No. 62-OF-18 of 12 March 1962 to repress subversive activities; Law No. 90-52 relating to freedom of mass communication; Law No. 90-53 relating to freedom of association; Law No. 90-55 to lay down regulations governing public meetings and processions; and Law No. 90-56 relating to political parties (instituting political pluralism). The Committee has also taken note of Law No. 90-47 relating to the state emergency, Law No. 90-54 relating to the maintenance of law and order, Law No. 90-60 to set up and organize the State Security Court and Law No. 90-61 to amend certain provisions of the Penal Code, all adopted on 19 December 1990.

The Committee is addressing a request directly to the Government concerning certain provisions of the aforementioned Laws in relation to the application of the Convention.

2. *Article 1(c) and (d).* In the comments it has been making for many years the Committee has noted that, by virtue of sections 226, 229, 242, 259 and 261 of the Merchant Shipping Code (Ordinance No. 62/DF/30 of 1962), certain breaches of discipline committed by seamen may be punished by penalties of imprisonment involving the obligation to work.

The Government has previously stated that it would take the Committee's observations into account when the revision of the Merchant Shipping Code was undertaken. The Committee has noted that the information given by the Government in its report for the period ending in 1991 to the effect that the Merchant Shipping Code has not been revised and that no change can be made in the law until that has been done.

The Committee observes once again that the Government has been referring to the envisaged repeal of the provisions in question since its report for 1972-73 and that the Government had stated that studies were being made with a view to harmonising national legislation and practice with the provisions of the Convention.

The Committee asks the Government to state the outcome of those studies, to report on the progress made in revising the Merchant Shipping Code and to supply information about the measures taken or contemplated to ensure that penalties of imprisonment involving compulsory labour cannot be imposed on seamen for breaches of discipline that do not endanger the vessel or human life or health.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chad (ratification: 1961)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation which read as follows:

> The Committee notes that the Constitution, promulgated by Decree No. 1036/PR/89 of 16 December 1989, was suspended in December 1990.
>
> In its previous comments, the Committee referred to the provisions of Ordinance No. 30/CSM of 26 November 1975 and to Act No. 15 of 13 December 1959, under which any person participating in strike action may be punished by imprisonment involving compulsory labour, and to Act No. 35 of 8 January 1960 concerning subversive writings. The Committee notes the indications in the Government's report that workers in certain enterprises went on strike but were not subjected to compulsory labour. The Committee also notes that the competent ministries have again been requested to repeal or amend the texts which are contrary to the Convention.
>
> The Committee hopes that the Government will report on any measures taken in this respect in the very near future.

Colombia (ratification: 1963)

The Committee notes the Government's report and particularly the promulgation of Act No. 65 of 1993 (the Prisons Code).

The Committee notes section 79 of the above Code, under which work is compulsory for convicts in prison establishments as an appropriate therapeutic means of preparing them for reintegration into society.

Article 1(d) of the Convention. The Committee notes the discussions that took place at the Conference Committee in 1993 and 1994 on the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and the Right to Organize and Collective Bargaining Convention (No. 98), during which the Worker members expressed their concern at the criminalization of trade union activities by applying anti-terrorist legislation and various sections of the Penal Code to workers participating in strikes. The Committee also noted the information provided to the Committee on Freedom of Association by the United Central Workers' Organization (CUT) on these matters. The provisions referred to include:

- Penal Code: section 187: terrorism; section 290: breach of the freedom to work; section 291: sabotage; section 276: unlawful constraint; section 370: damage to the property of others; section 313: insult; section 164: violence against an official of the State; and section 5 read with sections 2 and 3 of Act No. 23 of 1991: breaking and entering and unlawful occupation of the workplace. The penalties under these provisions are one to ten years of imprisonment for the offence of terrorism, detention of from six months to three years under section 290, and one to six years' imprisonment for the other provisions of the Penal Code.

The Committee also notes that under section 16, Book III, Title IV, Chapter I of the National Police Code: "Any person obstructing the movement of a person or vehicle on a public thoroughfare shall be liable to a fine ... If the obstruction arises as a result of a strike, public meeting or other similar circumstance, the penalty shall be detention of from one to 30 days".

The Committee notes that the Prisons Code provides for no exceptions to the obligation to work for people convicted for taking part in strikes. Under section 83 of the above Code the only persons exempt from the obligation are those of over 60 years of age, persons suffering from a disease which incapacitates them for work, and women in the three months prior to childbirth and one month after.

The Committee recalls that, as it indicated in paragraphs 102-109 of its 1979 *General Survey on the Abolition of Forced Labour*, States ratifying the Convention undertake to abolish all forms of forced labour including prison labour arising out of a conviction, in the five cases set out in the Convention.

The Committee asks the Government to provide information on the measures taken or envisaged to ensure that, in accordance with the provisions of Article 1(d) of the Convention, penalties involving compulsory labour for participation in strikes may not be imposed.

The Committee also asks the Government to provide information on the application in practice of the above-mentioned sections of the Penal Code and section 16, Book III, Chapter IV of the National Police Code, stating the number of court convictions handed down under the above provisions in the last three years, and the penalties imposed.

Cuba (ratification: 1958)

In its previous comments, the Committee had referred to section 2 of Act No. 1253 (Youth Labour Army), which provides that "all young persons who are under a duty to perform active military service and who are not called upon to perform that service in regular units of the Revolutionary Armed Forces shall be called up into the Youth Labour Army". Section 4 of the Act provides for the performance of productive agricultural work and work of any kind that the revolutionary Government may determine. The Committee had observed that from the tenor of the said provision being called-up into the Youth Labour Army does not appear to depend on the young recruit's wishes.

The Committee had also taken note of the comments submitted by the International Confederation of Free Trade Unions (ICFTU) that members of the Youth Labour Army are employed in tasks for economic development.

On this point, the Government indicated that the youth recruited for active military service are given the oppportunity to express their desire to enter the Youth Labour Army; if they do not wish to do so, they may do their military service in regular units and that during such service the young person can acquire a profession or trade. In its latest report, the Government states that young workers who are not well-off economically are given the opportunity to join the Youth Labour Army, where they receive a salary proportional to the quality and quantity of the work performed in accordance with the schedule of salaries in force in the country for the same work. The Government further indicates that the young persons are assigned in one unit near the place where they live and the activities performed are to the direct interest of the community for the harvest of coffee, fruit, vegetables and forest work.

The Committee also takes note that its observation has been submitted by the Government to the National Assembly of People's Power for consideration.

The Committee trusts that the Government will take the necessary measures to modify the provisions of Act No. 1253 in the manner that it will be clearly established that entry into the Youth Labour Army is voluntary. The Committee likewise requests the Government to communicate information relating to the remuneration received by young workers performing the work mentioned in the Government's report who are in the Youth Labour Army and the conditions of work in the same.

Cyprus (ratification: 1960)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following points:

> In the comments that it has been making for a number of years, the Committee has noted that section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Law (Chap. 175A) authorizes recourse to the provisions of Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services and, in particular, to secure their equitable distribution or their availability at fair prices, to promote the productivity of industry, commerce and agriculture, to foster and direct exports and reduce imports, to redress the balance of trade, and to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Defence Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work essential for any such purpose, not to terminate their employment or absent themselves from work or to arrive persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour), and Regulation 79B authorizes the Government to issue regulations to prohibit strikes on pain of imprisonment, by virtue of the provisions of Regulation 94.
>
> The Committee has noted the Government's repeated statements in its reports and to the Conference Committee to the effect that the above provisions can only be applied to the extent that they are not in conflict with the Constitution of Cyprus, of which article 10 prohibits forced or compulsory labour except in cases which threaten the life or well-being of the population, and which permits recourse to the Supreme Court to challenge the constitutional validity of an order issued under Defence Regulation 79A. The Committee had noted the Government representative's statement to the Conference Committee that the Government had nevertheless decided to take all possible steps to respect the Convention and that it proposed to amend the legislation in order to avoid any controversy. The Committee also noted the information supplied by the Government in its report to the effect that it has not had recourse to the above provisions since February 1989, that the legislation was currently being re-examined and that the Government had requested technical assistance from the Office for this purpose.
>
> The Committee points out that, under Article 1(c) and (d) of the Convention, a ratifying State undertakes to suppress and not to make use of any form of forced or compulsory labour as a means of labour discipline or as a punishment for having participated in strikes. With reference also to the explanations provided in paragraphs 110-132 of its 1979 *General Survey on the Abolition of Forced Labour*, and to the request for assistance referred to by the Government, the Committee expresses the firm hope that the Government will take the necessary measures in the near future to bring the legislation into conformity with the Convention and that it will supply the text of the provisions adopted to that effect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ecuador (ratification: 1962)

In earlier comments the Committee has referred to Decree No. 105 of 7 June 1967 under which sentences of imprisonment of from two to five years can be imposed on anyone who foments or takes a leading part in a collective work stoppage. The sentence laid down for someone who participates in such a stoppage without fomenting or taking a leading part in it is correctional imprisonment of from three months to one year. For the purposes of this provision "there is a work stoppage when there is a collective cessation of activity, the imposition of a lockout other than in the cases allowed by law, the paralysing of ways of communication and similar anti-social acts". Prison sentences involve compulsory labour by virtue of sections 55 and 56 of the Penal Code.

The Committee also referred to section 65 of the Maritime Police Code, under which crew members of an Ecuadorian vessel may not apply to disembark in a port other than the port of embarkation except with the agreement of the master. It also provides that if a crew member deserts he shall forfeit his pay and belongings to the vessel and that if he is captured he shall pay the cost of his arrest and be punished in accordance with the navy regulations in force.

The Committee expressed the hope that measures would be taken concerning these provisions in order to ensure the observance of *Article 1(c) and (d), of the Convention*. The Committee also asked the Government to provide information on the application in practice of sections 130, 133, 134, 148, 153, 155 and 367 of the Penal Code to enable it to ascertain the scope of these provisions in the light of *Article 1(a) and (c), of the Convention*.

The Committee noted with interest that several draft decrees had been prepared with the assistance of representatives of the Director-General of the ILO in November 1989. Under these draft decrees, Legislative Decree No. 105 is interpreted as inapplicable to strikes or collective labour disputes; section 165 of the Maritime Police Code is repealed; sections 53, 54, 55 and 66 of the Penal Code and section 22 of the Code on the Execution of Sentences and Social Rehabilitation must be interpreted so that the work of convicted persons in detention and re-education centres shall be voluntary and the proceeds from this work shall accrue exclusively to the convicted persons.

The Committee noted that on 25 March 1991 the Minister of Labour and Human Resources submitted the above-mentioned drafts to the National Congress with a view to their being placed on the latter's agenda.

The Committee expressed the hope that the drafts would be adopted rapidly to ensure that the Convention was observed with regard to the points raised.

The Committee notes that in its report of November 1994 the Government states that the above drafts have not yet been dealt with by the National Congress. The Committee notes the communications to the President of the National Congress in which the Ministry of Labour requested in April 1993 and in March 1994 that the drafts be dealt with.

The Committee notes the comments made by the Ecuadorian Federation of Classist Organizations in October 1994 to the effect that nothing has been done to comply with the Committee's observation concerning the application of this Convention.

The Committee deems it necessary to urge the Government once again to take the necessary steps to bring the national legislation into line with the Convention, and trusts that the adoption of the decrees drafted for this purpose will not be further postponed.

Guatemala (ratification: 1959)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following points:

> *Article 1(a), (c) and (d) of the Convention.* For several years the Committee has been referring to the provisions of Legislative Decree No. 9 of 10 April 1963, and to sections 390(2), 396, 419 and 430 of the Penal Code, under which sentences of imprisonment involving, by virtue of section 47 of the Penal Code, the obligation to work, can be imposed as a punishment for expressing certain political opinions, as a measure of labour discipline or for participation in strikes.

In its report for 1990-91, the Government stated that the Congress of the Republic has before it a preliminary draft of a Penal Code which will take into consideration the Committee's comments.

The Committee notes that this matter has been the subject of its comments for more than ten years and once again recalls that, as stated in paragraphs 102 to 109 of its 1979 *General Survey on the Abolition of Forced Labour*, States which have ratified the Convention take upon themselves the obligation to suppress any form of forced labour, including labour as a result of a conviction in a court of law, in the cases set out in the Convention.

The Committee also recalls that, with a view to bringing the legislation into harmony with the Convention, measures can be taken either to redefine the offences which can be sanctioned in order to ensure that no-one can be punished for having expressed political opinions or indicated their ideological opposition to the established political, social or economic system, or by according a special status to prisoners convicted of certain offences, under which they are free from the obligation to perform compulsory prison labour, although they retain the right to work upon request.

The Committee trusts that the Government will soon take the necessary measures to ensure observance of the Convention on this point.

Jamaica (ratification: 1962)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation.

Article 1(c) and (d) of the Convention. In comments made for many years, the Committee referred to sections 221 to 224 and 225(1)(b), (c) and (e) of the 1894 United Kingdom Merchant Shipping Act which provide for the punishment of various disciplinary offences with imprisonment (involving an obligation to perform labour) and for the forcible conveyance of seamen on board ship to perform their duties.

The Government previously reported that the questions raised in relation to the Merchant Shipping Act were being studied and that the final draft of a Jamaican Bill on merchant shipping was under review but had not yet been submitted to Parliament.

The Committee has noted the Government's indication in its report for 1987-91 that the first draft of the Bill has been prepared which, it is hoped, will be enacted before the end of the 1991 legislative year.

The Committee hopes that the necessary amendments will soon be adopted and that the Government will report on progress made and provide a copy of the new merchant shipping legislation when enacted.

Liberia (ratification: 1962)

The Committee notes with regret that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

Article 1(a) of the Convention. 1. The Committee noted the entry into force on 6 January 1986 of the new Constitution which guarantees fundamental rights, in particular the right to freedom of expression (article 15), the right to assemble and to associate (article 17), and provides for the free establishment of political parties, subject to their being registered (articles 77 and 79). The Committee noted that under article 95 of the new Constitution any enactment or rule of law in existence immediately before the coming into force of the Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of the new Constitution, continue in force as if enacted, issued or made under the authority of the Constitution. The Committee referred to its previous comments in which it observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within Article 1(a) of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee requested the Government to state whether the above provisions continue in force and, if so, to indicate the measures taken or contemplated with a view to their repeal. The Committee also requested the Government to provide a copy of the Decree No. 88A of 1985 relating to criticism of the Government.

Article 1(c) and (d)

2. In earlier comments the Committee also referred to various provisions of the Maritime Law punishing breaches of labour discipline and of Decree No. 12 of 30 June 1980 prohibiting strikes. In the absence of a reply, the Committee again addressed a direct request on these matters to the Government.

3. In its previous comments concerning Decree No. 12 of 30 June 1980 prohibiting strikes, the Committee noted the Government's statement in its report for 1982-83 that no penalty had been imposed for violation of the Decree and the statement by a Government representative to the Conference Committee in 1984 during the discussion of Convention No. 87 that the ban on strikes was due to be lifted on 26 July 1984.

The Committee observed that the Government's report contained no information in this regard. The Committee noted however from the conclusions adopted by the Committee on Freedom of Association concerning Case No. 1219 (in particular the 241st Report of that Committee) that the ban on strikes had not yet been lifted. The Committee requested the Government to provide information on any measures adopted or envisaged in this matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following points:

1. *Article 1(a), (c) and (d) of the Convention.* In the comments it has been making for a number of years, the Committee has referred to various provisions of the Publications Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

The Committee has noted the information supplied by the Government to the effect that Act No. 5 of 1991 on the application of the principles of the Green Book on Human Rights, and Act No. 20 of 1991 on the promotion of freedom, proclaim the right of each citizen to express his opinion, and that part 2 of the Green Book prohibits penalties such as forced labour. It also notes that under section 2 of Act No. 5 of 1991, amendments must be drawn up within a period of one year and that the provisions of the Publications Act No. 76 of 1972 and of the Penal Code will be amended.

The Committee hopes that the envisaged amendments will provide for the exemption from compulsory labour imposed as a punishment or means of coercion or political education on persons who have expressed certain political or ideological opinions and that they will abolish forced or compulsory labour as a measure of labour discipline.

The Committee requests the Government to supply information on the work that has been undertaken to amend the legislation and to transmit the relevant texts.

2. The Committee has noted the information provided by the Government in 1992 in reply to its comments, to the effect that the Orders of the Higher Council of the Revolution of 1969, the texts of which it had been requesting, became null and void following the promulgation of Acts Nos. 5 and 20 of 1991.

The Committee notes that section 35 of Act No. 20 of 1991 provides in general terms that all conflicting legislation is amended. It also notes that the Orders in question on the defence of the revolution (of 11 December 1969) and on trials for political and administrative corruption (of 26 October 1969) are explicitly referred to in section 5(A)(8) of the Publications Act No. 76 of 1972. The Committee requests the Government to indicate the measures that have been taken to formally repeal the texts in question and to transmit the provisions adopted to this effect.

The Committee notes that the text of Act No. 5 of 1991 was not included in the list of texts transmitted by the Government. It requests the Government to supply the text of this Act and of all other texts referred to above, and particularly the Green Book on Human Rights and the legislative texts concerning the establishment, functioning and dissolution of associations and political parties.

Rwanda (ratification: 1962)

The Committee notes that the Government's report has not been received. It must, therefore, repeat its previous observation which read as follows:

> The Committee notes the new Constitution of 30 March 1991 which guarantees, inter alia, multipartism (section 7) and freedom of association (section 19). The Committee hopes that during any process of revising the legislation, the Government will take into account the Committee's comments concerning a number of provisions to which it refers in a request addressed directly to the Government and that it will supply information on the measures that have been taken or are envisaged to bring the legislation into full conformity with the requirements of the Convention.

United Republic of Tanzania (ratification: 1962)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following points:

> Further to its previous comments the Committee has noted the information provided by the Government in its report. The Committee has noted the discussion which took place in the Conference Committee in 1992.
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> The Committee has noted the Government's statement in its report that ministerial consultations aimed at amending a number of provisions contained in the Penal Code, the Newspapers Act, the Merchant Shipping Act and the Industrial Court Act are continuing, bearing in mind the political situation, following the adoption of the ninth constitutional amendment. The Constitution, as amended, allows for multi-party politics; and the Political Parties Act 1992 provides specifically for formation and registration of political parties.
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> The Committee hopes that the draft legislation under consideration will provide for the repeal of all provisions which are incompatible with the Convention and that the Government will indicate the action taken in this regard. The Committee also hopes that the Government will provide information on the amendment or repeal of the provisions of different enactments to which it refers in its comments under Convention No. 29 and which are in contradiction with Article 1(b) of Convention No. 105.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Thailand (ratification: 1969)

The Committee has noted the information provided by the Government in its report in reply to the 1994 observation.

Article 1(a) of the Convention. 1. The Committee noted previously that penalties of imprisonment may be imposed under sections 4, 5, 6 and 8 of the Anti-Communist Activities Act B.E. 2495 (1952) on anyone who engages in communist activities, or who conducts propaganda or makes any preparation with a view to carrying on communist activities, who is a member of any communist organization, or who attends any communist meeting unless he can prove that he did so in ignorance of its nature and object. Similarly, under sections 9, 12 and 13 to 17 of the same Act, inserted by the Anti-Communist Activities Act (No. 2) B.E. 2512 (1969), penalties of imprisonment may be imposed on whoever assists any communist organization or member of such organization in a variety of ways, who propagates communist ideology or principles leading to the approval of such ideology, or who contravenes restrictions imposed by the Government on movements, activities and liberties of persons in any area classified as a communist infiltration area.

The Committee notes the Government's indication in its report that, as stated before, the Anti-Communist Activities Act of 1952 was considered necessary to punish any activity which would endanger the peace and security of the nation and the people. The Government adds that any view which is ideologically opposed to the established political, social or economic system without incitement to violence can be expressed under the scope of the Thai Constitution, and that Thailand is one of the liberal countries in the world which allows people to freely express their opinions, and carry out their peaceful activities both for and against the established regime.

The Committee has taken due note of these indications. It must again point out that the above-mentioned provisions are not limited in scope to the punishment of violence or of incitement to violence, but may be used as a means of political coercion or as a punishment for holding or expressing, even peacefully, certain political views or views ideologically opposed to the established political, social or economic system, and are accordingly incompatible with Article 1(a) of the Convention in so far as the penalties provided involve compulsory labour.

With regard to the protection afforded under the Constitution, the Committee notes that in Chapter III of the Constitution of the Kingdom of Thailand, B.E. 2521 (1978), (Rights and liberties of the Thai people) the rights of free speech, writing and publishing (section 34), peaceable assembly without arms (section 35), forming associations (section 37) and political parties (section 38) were all expressly limited by any restrictions set forth in laws. Thus, the constitutional protection referred to was restricted by the provisions of the Anti-Communist Activities Act B.E. 2495 (1952). The Committee notes that after the National Peacekeeping Committee seized and took control of administrative power over the country on 23 February B.E. 2534 (1991), a "Constitution for the Administration of the Kingdom" was proclaimed on 1 March B.E. 2534 (1991) which contains no guarantees similar to those of sections 34, 35, 37 and 38 of the 1978 Constitution.

The Committee again expresses the hope that the necessary measures will be taken with regard to the Anti-Communist Activities Act to ensure the observance of the Convention, and that the Government will report on the action taken.

Article 1(c). 2. In comments made since 1976, the Committee has noted that sections 5, 6, and 7 of the Act for the prevention of desertion or undue absence from merchant ships, B.E. 2466 (1923), provide for the forcible conveyance of seamen on board ship to perform their duties.

In 1990, the Committee noted the Government's indication in its report for the period ending 30 June 1988 that "the Act for the prevention of desertion or undue absence from merchant ships, B.E. 2466 (1923), has not been changed or repealed at present", but that a committee had been established for considering seamen's legislation, and that any alterations to this legislation would be reported to the ILO as soon as possible. The Committee notes the Government's indication in its latest report, made after consideration with the Juridical Council, that the Act previously mentioned should be the Act of prevention of crews absent from their duty on merchant ships, B.E. 2465 (1922) which is being enforced. The Government adds that the provisions would however probably be useless at present because it was not to be enforced for a very long time.

The Committee hopes that in the circumstances the Government will be in a position to take the necessary measures to have sections 5 to 7 of the Act repealed, and that it will soon report on the action taken.

3. The Committee noted previously that under sections 131 and 133 of the Labour Relations Act, B.E. 2518 (1975), penalties of imprisonment (involving compulsory labour) may be imposed on any employee who, even individually, violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, paragraph (2), 22, paragraph (2), 23 to 25, 29, paragraph (4) or 35(4) of the Labour Relations Act. In this regard, the Government indicates in its latest report that the penal sanction under sections 131 and 133 of the Labour Relations Act B.E. 2518 (1975) is imposed on employers and employees who violate, or fail to comply with, the agreement relating to conditions of employment or the arbitration award while the agreement or award is still in force; the purpose of which is to protect the right of persons according to the agreement or the award and to ensure the compliance with the agreement and the award. The Government adds that there has been tripartite agreement to accept the Code of Conduct for the promotion of a labour relations system to resolve the labour conflict between employers and employees, and one of the main clauses provides that each party shall respect and comply with the provisions of labour law and the agreement relating to conditions of employment.

The Committee takes due note of these indications. It must recall that Article 1(c) of the Convention is not concerned with the enforcement of agreements or awards through the adjudication of damages or fines, but only with the use of any sanction that involves compulsory labour — such as a prison sentence does under relevant laws — as a punishment for a breach of labour discipline. While such a sanction is incompatible with the Convention when imposed for a breach of labour discipline, the Committee has considered that the protection of life or health — as distinct from mere labour discipline — is outside the scope of the Convention.

In this regard, the Committee has previously noted that sections 131 to 133 of the Labour Relations Act were incompatible with the Convention in so far as the scope of sanctions involving compulsory prison labour is not limited to acts and omissions that impair or are liable to endanger the operation of essential services, that is, services whose interruption would endanger the life, the personal safety or the health of the whole or part of the population, or which are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger. The Committee again expresses the hope that the Government will indicate the action taken or contemplated in this regard to ensure the observance of the Convention.

Article 1(d). 4. In its previous comments, the Committee noted that penalties of imprisonment may be imposed for participation in strikes under the following provisions of the Labour Relations Act:

(a) section 140 read together with section 35(2), if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or may cause hardship to the public or may affect national security or may be contrary to public order;

(b) section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator's award under section 25 has complied therewith, if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the Minister under section 23(1), (2), (6) or (8) or by the Committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

The Government indicates in its latest report that section 139 of the Labour Relations Act is intended to ensure a labour relations procedure to be step by step, and not causing hardship to the public, and that section 140 of the Labour Relations Act is intended to suppress the exercise of the right to strike or lock-out for specific reasons where it is considered that the lock-out or strike may adversely affect the economy of the country or cause hardship to the public or endanger the security of the country, or that it is against public order, in the Government's view, the enforcement is necessary to protect the general public and to maintain public order.

The Committee takes due note of these indications. It must again point out that the provisions referred to provide for binding awards or ministerial decisions not only where these have been freely accepted by the parties, or where they concern essential services whose interruption would endanger the life, the personal safety or the health of the whole or part of the population, or in cases of *force majeure* likewise endangering the life, the personal safety or the health of the whole or part of the population, but in a wider range of circumstances where their enforcement with penalties involving compulsory prison labour is contrary to Article 1(d) of the Convention.

Recalling the Government's indication in its report for the period ending June 1988 that the powers conferred under section 35 have been seldom used, and referring also to the explanations provided in paragraphs 122 to 132 of its above-mentioned *General Survey*, the Committee once more expresses the hope that the Government will take the necessary measures to have the above-mentioned provisions amended, and that it will indicate the action taken.

5. The Committee previously noted that under section 117 of the Criminal Code participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people was punishable with imprisonment. The Committee notes the Government's indication in its report that section 117 aims to ensure the security within the country, that it is used in practice in respect of persons whose intentions are to overthrow the Government by unconstitutional means, but that nobody has been prosecuted under this section.

The Committee again refers to the explanations provided in paragraph 128 of its 1979 *General Survey on the Abolition of Forced Labour*, where it indicated that while the prohibition of purely political strikes lies outside the scope of the Convention, nevertheless, in so far as restrictions on the right to engage in such strikes are accompanied by penalties involving compulsory work, these restrictions should apply neither to matters likely to be resolved through the signing of a collective agreement nor to matters of a broader economic and social nature affecting the occupational interests of workers.

The Committee again expresses the hope that the necessary action will be taken to remove all strikes pursuing aims of an economic and social nature that affect the workers' occupational interests from the scope of sanctions under section 117 of the Criminal Code and that pending such action, the Government will continue to supply information on the application in practice of section 117.

6. The Committee noted previously that section 19 of the State Enterprise Labour Relations Act, enacted on 15 April 1991, provided that workers of state enterprises shall not in any case stage a strike or undertake any activity in the nature of a strike. Under section 45, paragraph 1, of the Act a person who violates this prohibition may be punished by imprisonment for a term of up to one year; this penalty is doubled in the case of a person who "incites, or aids or abets the commission" of the offence under paragraph 1.

The Committee noted that a revised Act was to be submitted to Parliament and expressed the hope that the provisions to be adopted would be in conformity with the Convention. The Committee notes from the Government's report that the State Enterprise Labour Relations Bill B.E. 2534 (1994) passed the first reading in Parliament on 28 September 1994, and that the legislation will allow employees to form activities relations committees (section 18) and to enjoy representation rights, although not the right to strike (section 19). Under section 45, paragraph 1, of the Act a person who violates the prohibition to strike may be punished by imprisonment for a term of up to one year; this penalty is doubled under paragraph 2, in the case of a person who "incites, or aids or abets the commission" of the offence under paragraph 1.

Addressing the question how imprisonment as a punishment for striking employees can be justified under Article 1(d) of the Convention, the Government lists a number of reasons: in its view, a strike is an industrial weapon designated to apply to labour relations in the private sector, while state enterprises could not fully function as private entities and employment relations there are far from competitive. Rarely have any complaints been received from Thai civil servants, from whom the right to strike is also withheld, because they understand how essential their tasks are for the people who rely on their service, and what harm a strike might do. Most of the state enterprises provide essential services to the public. In the private sector unions turn to strike as a final resort after other methods of collective bargaining have failed; on the contrary, even the threat to strike from state enterprises' unions tended to harm or endanger the public who depend on their services and, irrespective of how the strike would end, the strikers were fully assured that their undertakings would not be discontinued and neither the Government nor the management would take the risk of dismissing them; temporary replacement of striking employees, as practised in the private sector, had rarely been executed in state enterprises [in time] before severe losses occurred. What the public expects from the state enterprise is not the unlikely profit from their transactions, but the assurance of continuity of essential services. Total abolition of the no-strike clause is contrary to the basic principle of public administration; the public interest comes first. If Parliament gives the final approval to the Bill, it implies that the majority of the people give strong support to this law and make it even harder to contest its legitimacy.

The Committee has taken due note of these indications. Referring again to the explanations provided in paragraph 123 of its 1979 *General Survey on the Abolition of Forced Labour*, the Committee recalls that the imposition of penalties of imprisonment involving compulsory labour on striking employees would be compatible with the

Convention in the case of essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population, because there the punishment is not aimed at the strike as such but at the endangering of life, personal safety or health. The distinction between essential and non-essential services is a functional one and does not depend on private or state ownership of the enterprises concerned. A blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention. The Committee hopes that the Government will reconsider the issue with a view to bringing the relevant legislation into conformity with the Convention, and that it will supply full information on the action taken.

The Committee also requests the Government to report in detail on the provisions punishing strikes by civil servants, mentioned in the Government's report.

Trinidad and Tobago (ratification: 1963)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation on the following matters:

> *Article 1(c) and (d) of the Convention.* 1. In previous comments, the Committee noted that the provisions of section 157(1)(a), (b) and (c) of the Shipping Act, 1987 provide for penalties of imprisonment (involving, under rules 255 and 269(3) of the Prisons Rules, compulsory labour) for disobeying lawful commands and are substantially identical to provisions of the Merchant Shipping Act, 1894, which have been the subject of comments by the Committee for many years. While subsection (2) of section 157 of the Shipping Act, 1987 excludes the application of subsection (1) to a lawful strike after the ship has been secured in good safety to the satisfaction of the master and the port authority at a port in Trinidad and Tobago, subsection (1) may still be applied to strikes outside Trinidad and Tobago as well as to breaches of labour discipline which do not endanger the safety of the ship or the life or limb of persons (endangering life or ship is the subject of a specific provision in section 156, which has no bearing on the Convention). Similarly, section 158 of the Shipping Act, 1987 follows section 221 of the 1894 Act in punishing desertion and absence without leave with penalties of imprisonment involving compulsory labour. Finally, section 162 of the 1987 Act still provides for the apprehending and forcible conveyance of deserters on board ship upon the request of the master of the ship, regarding both seamen deserting in Trinidad and Tobago from a ship registered abroad and, by way of reciprocity, seamen deserting in a foreign State from a ship registered in Trinidad and Tobago.
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> The Committee has noted the information in the Government's report for 1989-91 that the above-mentioned provisions are currently being examined in consultation with the Minister of Works, Infrastructure and Decentralization entrusted with the administration and implementation of the Shipping Act, 1987, as well as with the Solicitor-General.
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> The Committee hopes that the Government will provide information on the outcome of these consultations and on measures taken to bring sections 157(1)(a), (b) and (e), 158 and 162 of the Shipping Act, 1987 into conformity with the Convention. The Committee also hopes that the Government will send, as indicated in its report, the statistical data on the practical application of these provisions.
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> 2. In its previous comments, the Committee referred to section 8(1) of the Trade Disputes and Protection of Property Ordinance, under which penalties involving compulsory labour may be imposed for breach of contract by persons employed in certain public services where the probable consequences would be to deprive the inhabitants, wholly or to a great extent, of such services. The Committee observed that certain of the services mentioned in section 8(1) of the Ordinance (electricity, water, health, sanitary or medical services) are strictly essential because their interruption could endanger the life, personal safety or health of the whole or part of the population, while in others (namely, railway, tramway, ship or

other transport services) only a few posts essential to security might fall under the same category. The Government indicated that no penalties involving compulsory labour had been imposed in the country for the purposes enumerated.

In its latest report the Government indicates that the comments concerning the amendment of the aforementioned section 8(1) have been noted.

The Committee again expresses the hope that the necessary action will soon be taken to bring law into conformity with the Convention on this point as well as with the indicated practice, by ensuring that no penalties involving compulsory labour may be imposed for breaches of contract which are not likely to endanger the life, personal safety or health of the whole or part of the population, and that the Government will indicate the measures taken to this end.

Article 1(d). 3. The Committee has noted in previous comments that under section 69(1)(d) and (2) of the Industrial Relations Act, 1972, teachers in the public service are prohibited from taking part in a strike, subject to penalties of imprisonment involving the obligation to work.

The Committee notes the Government's information in its report for 1989-91 that the work of the Committee which was appointed to review all the Service Acts and their relevant regulations is still continuing. The Committee notes in this connection that Draft Regulations to provide for a Code of Conduct for civil servants and for teachers have been prepared.

The Committee hopes that in reviewing the legislation, the Government will take due account of the provisions of the Convention and that it will provide information on measures adopted to bring section 69(1)(d) and (2) of the Industrial Relations Act into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1961)

The Committee notes that no report has been received from the Government. The Committee has, however, taken note of a communication dated 4 July 1994 from the Confederation of Turkish Trade Unions (TURK-IS), which quotes the second paragraph of article 18 of the 1982 Constitution, alleging that this provision violates the Convention. Copy of this communication was sent to the Government on 8 August 1994. The Committee hopes that a report will soon be sent by the Government and that it will address the allegations of the Confederation of Turkish Trade Unions, supplying copies of any implementing legislation under article 18(2) of the Constitution and full details on its application in practice, and that it will also supply information on the following matters raised in its previous observations:

Article 1(c) of the Convention. In comments made for a number of years the Committee noted that section 1467 of the Commercial Code (No. 6762 of 29 June 1956) empowers the master of a ship to use force with a view to ensuring the proper running of the vessel and the maintenance of discipline to bring deserting seafarers back on board to perform their duties.

The Government previously stated that the authority granted to masters to this effect is restricted to the case of necessity and that in its view this application is in conformity with paragraph 2(d) of Article 2 of the Forced Labour Convention, 1930 (No. 29) and falls outside the definition of labour discipline in paragraph (c) of Article 1 of Convention No. 105. The Government also indicated that the expression "case of necessity" means that a measure as contemplated in section 1467 would be compulsory only in the event of emergencies (i.e. in cases of danger to the security of the vessel, passengers and the goods on board), and that, if taken, such a measure would be immediately lifted after the completion of the vessel's journey and that bringing back by force a deserting seaman is closely related with the purpose of the proper running of the vessel.

The Committee observed that Article 1(c) of the Convention prohibits without exception the use of any form of forced or compulsory labour as a means of labour discipline, and that in order to remain outside the scope of the Convention, any sanction involving compulsory labour must be limited to acts endangering the safety of the ship or the life or health of persons which need to be strictly defined. Neither these criteria nor those of Article 2(2)(d) of Convention No. 29 are met by the wording of section 1467 of the Commercial Code, which empowers the master to use force for ensuring the proper running of the vessel and the maintenance of discipline. Moreover, the existence of legal remedies is inadequate where the criteria laid down in national law do not meet the standard of the Convention.

The Committee notes that in its report for the period 1990-91 the Government referred to the Maritime Labour Act No. 854 of 20 April 1967 which applies to seamen who work under an employment contract on board vessels of 100 gross tons and over, flying the Turkish flag, on seas, lakes, inland waterways and rivers and to their employers. The Government states that this Act, adopted later than the Commercial Code, has priority as concerns application of the legislation on matters in connection with the Convention. The Government further reiterates its previous views concerning the limitation of the application of the provision of section 1467 to cases of necessity, the legal remedies available and the conformity in its opinion with the provisions of the Convention, views which are shared by the Turkish Confederation of Employers' Association.

The Committee notes that under section 14 of the 1967 Maritime Labour Act the contract of employment of a seaman who fails to return on board ship (or who returns on board ship but refuses to perform his duties) may be terminated by the employer. The Committee notes with interest that the Act does not provide for the forcible return on board ship. The Committee observes that the 1967 Act does not however formally repeal section 1467 of the Commercial Code and that its scope is limited to ships of 100 or more gross tons.

The Committee has noted the Government's statement in its report for 1990-91 that tripartite meetings are being held with a view to examining possible amendments to the labour legislation and that the Government considers suggesting an amendment on the matter in question in the forthcoming meetings.

The Committee trusts that the Government will indicate action taken either to repeal the powers under section 1467 of the Commercial Code or to limit them to circumstances where the safety of the ship or the life or health of persons are in danger.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uganda (ratification: 1963)

The Committee notes that no report has been received from the Government. It must, therefore, repeat its previous observation which read as follows:

1. The Committee previously noted that by the Proclamation of 26 January 1986 all legislative powers referred to in the Constitution were vested in the National Resistance Council and several chapters of the Constitution were suspended, or considered void if inconsistent with the Proclamation; that the operation of the Constitution and the existing laws are construed with such modifications, qualifications and adaptations as necessary to bring them into conformity with the Proclamation. The Committee notes that under Legal Notice No. 1 of 1986 (Amendments) (No. 2) Statute, 1989, the National Resistance Council shall continue in existence for a period of five years from 25 January 1990.

The Committee hopes that the Government will provide information on any measures adopted in relation to Chapter III of the Constitution (protection of fundamental rights and freedoms of the individual), in particular as regards articles 17 and 18 (protection of freedom of expression, of assembly and association), as well as in relation to the suspension of activities of political parties and on any penalties involved.

2. In previous comments the Committee noted that the Public Order and Security Act, empowering the executive to restrict, independently of the commission of any offence, an individual's association or communication with others, subject to penalties involving compulsory labour appeared to have been repealed. The Committee again requests the Government to indicate whether this Act has actually been repealed and to supply a copy of any text adopted to this effect. The Committee had also referred to measures to be taken to repeal or amend section 21A of the Newspaper and Publications Act (inserted by Decree No. 35 of 1972) under which the publication of any newspaper may be prohibited if the competent minister considers it to be in the public interest to do so and which is enforceable with imprisonment (involving an obligation to perform labour). The Committee hopes that the necessary measures will soon be taken and, pending their adoption, it again requests the Government to supply details on all cases in which prohibitions are made or maintained in application of these provisions.

3. In its previous comments, the Committee noted that sections 54(2)(c), 55, 56 and 56A of the Penal Code empower the competent minister to declare any combination of two or more persons to be an unlawful society (a power exercised in respect of various political, religious and student organizations by Statutory Instruments Nos. 12 of 1968, 153 of 1972 and 63 of 1973) and thus render any speech, publication or activity on behalf of or in support of any such association illegal and punishable with imprisonment (involving an obligation to perform labour). The Committee also noted that a number of orders made under these provisions between 1975 and 1977 were revoked by the Penal Code (Unlawful Society) (Revocation) Order, 1979, but that sections 54(2)(c), 55, 56 and 56A of the Penal Code appeared to remain in force.

The Committee notes that by Statutory Instrument No. 15 of 1991 a society was declared unlawful under section 54(2) of the Penal Code. The Committee requests the Government to provide details on this case and any other cases of prohibition as well as on the measures adopted regarding the above provisions to ensure the observance of the Convention on this point.

4. *Article 1(c) and (d).* In previous comments the Committee noted that, under section 16(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, workers employed in "essential services" may be prohibited from terminating their contract of service, even by notice, that, by virtue of sections 16, 17 and 20A of the same Act, strikes may be prohibited in various services which, while including those generally recognized as essential ones, also extend to other services, interruption of which would not necessarily endanger the life, personal safety or health of the whole or part of the population and that contravention of these prohibitions may be punished with imprisonment (involving, as previously noted, an obligation to perform work). The Committee notes that the process to review the law is still under way. The Committee hopes that the Government will soon be able to indicate measures taken to bring sections 16, 17 and 20A of the Trade Disputes (Arbitration and Settlement) Act, 1964, into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Angola, Cameroon, Comoros, Cuba, Dominican Republic, Guinea-Bissau, Liberia, Mozambique, Panama, Papua New Guinea, Peru, Rwanda, Seychelles, United Republic of Tanzania, Thailand.***

Information supplied by ***Argentina*** in answer to a direct request has been noted by the Committee.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Bolivia (ratification: 1973)

In its previous observations on the need to take measures to give full effect to *Article 8, paragraph 3 of the Convention* concerning compensatory rest, the Committee referred to the Government's indication that the General Labour Law was in the process of revision with the technical assistance of the ILO. The Government indicates in its last report that there have been no changes with regard to the application of the provisions of the Convention. The Committee once again trusts that the new legislation will be adopted as soon as possible in order to ensure full compliance with the Convention. It also hopes that the Government will soon indicate the concrete steps taken in this regard and supply copies of the relevant legislative text.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1996.]

Colombia (ratification: 1969)

In its previous observations, the Committee noted with regret that Law 50 of 1990 to amend the Labour Code requires employers to grant a compensatory weekly rest day only where a person works a shift on a Sunday, when it would otherwise be the weekly day of rest, in establishments which operate on continuous shifts. Otherwise, those working exceptionally on the weekly rest day may still (as provided for in the previous version of the Labour Code) opt for either compensatory rest or compensatory payment. It noted that this Law contravenes *Article 8, paragraph 3, of the Convention*, which requires compensatory rest in all such cases. In its latest report, the Government repeats it previous reply on this point, indicating that the necessary measures will be taken in accordance with Article 53 of the 1991 Constitutional Reform to bring the legislation into conformity with the Convention. The Committee reiterates to the Government that in accordance with Article 8, paragraph 3, compensatory rest must be granted, regardless of any monetary remuneration, when temporary exemptions to the weekly rest requirements have been made. The Committee trusts that the Government will take the necessary steps in the near future to bring the legislation into conformity with the Convention and indicate any more recent developments in this respect.

[The Government is asked to report in detail in 1996.]

Egypt (ratification: 1958)

For several years, the Committee has noted that the Labour Code of 1981 does not ensure that compensatory rest is granted to persons working on the weekly rest day, as required by *Article 8, paragraph 3, of the Convention*. It notes the Government's indication in its reports in 1992, 1993 and again in 1994, that the Committee's comments have been presented to the tripartite commission, created in 1988 to study the revision of the Labour Code. The Committee reiterates to the Government that in accordance with Article 8, paragraph 3, compensatory rest must be granted, regardless of any monetary remuneration, when temporary exemptions are made for the reasons enumerated in paragraph 1 of this Article. The Committee trusts that the Government will take the necessary steps in the near future to bring the legislation into conformity with the Convention and indicate any more recent developments in this respect.

[The Government is asked to report in detail in 1996.]

Indonesia (ratification: 1972)

For several years, the Committee has been making comments on the need to take measures to give full effect to *Article 8, paragraph 3, of the Convention,* concerning compensatory rest. The Government's report indicates that there are no regulations on compensatory rest and refers to the Manpower Ministerial Regulation No. PER-03/MEN/1987 concerning the payment of wages for work performed on an official holiday effective on a weekly rest day. In this respect, the Committee once again must stress that the Convention requires the granting of compensatory rest in every case of exemption from the weekly rest day, regardless of any supplementary payment of wages in the event of work on a weekly rest day. It therefore requests the Government to take the necessary steps to bring the national laws or regulations into conformity with the Convention on this point.

The Committee further notes the Government's indication that employers are encouraged to include a compensatory rest provision in their company regulation or collective labour agreement. It requests the Government to supply copies of any company regulation and collective agreements so far adopted which reflect this practice.

The Committee has addressed a request for additional information directly to the Government.

[The Government is asked to report in detail in 1996.]

Kuwait (ratification: 1961)

Article 2 of the Convention. For several years the Committee has been drawing the Government's attention to the need to adopt provisions to guarantee a weekly rest period of 24 consecutive hours for workers covered by the Convention but excluded from the Labour Law (Private Sector) of 1964, namely temporary workers employed for a period of less than six months and workers in enterprises employing fewer than five persons. At the Conference Committee in 1992, the Government indicated that a draft law under consideration provides for a weekly rest period of 24 consecutive hours for all workers, including the previously described workers. The Committee invited the Government to send a copy of the draft law mentioned above so that it could fully assess the steps taken to bring the legislation into complete conformity with the Convention.

The Committee notes that the Government has not transmitted a copy of the draft legislation, nor has it submitted a report on the application of the Convention. The Committee trusts that the draft legislation will be adopted as soon as possible in order to ensure full compliance with the Convention. It also hopes that the Government will soon indicate the concrete steps taken in this regard and supply copies of the relevant legislative text.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail in 1996.]

Saudi Arabia (ratification: 1978)

Article 8, paragraph 3 of the Convention. For several years, the Committee has been drawing the Government's attention to the need to adopt measures to guarantee compensatory rest to workers who, under certain fixed cases provided for in section 150 of the Labour Code, work on the weekly rest day. In its previous observation, the Committee noted the Government's indication that the Committee's comments were being considered. In its latest report, the Government states that pursuant to the Labour Code, an employer must pay a worker for overtime work and that such compensation imposes a substantial financial burden on the employer, particularly when the worker has worked on the weekly rest day. The Government further explains that this financial burden discourages most employers from requesting workers to work on the weekly day of rest. In this respect, the Committee observes that under Article 8, paragraph 3, of the Convention, the granting of compensatory rest is compulsory in every case of exemption from the weekly rest, regardless of any monetary compensation in the event of work on a weekly rest day. It therefore requests the Government to take the necessary measures to amend section 150 of the Labour Code in such a way as to give full effect to Article 8, paragraph 3, of the Convention. It also requests the Government to keep it informed of any progress achieved in this respect and to supply a copy of the relevant text when it is adopted.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Bangladesh, Belarus, Brazil, Bulgaria, Cameroon, Djibouti, Dominican Republic, Ethiopia, Greece, Haiti, Indonesia, Iraq, Italy, Jordan, Malta, Morocco, Peru, Spain, Sri Lanka.*

Information supplied by *Egypt* and the *Islamic Republic of Iran* in answer to a direct request has been noted by the Committee.

Convention No. 107: Indigenous and Tribal Populations, 1957

Brazil (ratification: 1965)

1. *Invasion of "garimpeiros".* The Committee notes that the Yanomami or Free Forest (*Selva Libre*) Operation, phase II, began on 25 February 1994. The objective of the Operation is to prevent the illegal entry of independent gold miners (*garimpeiros*) and to expel them from the Yanomami indigenous area. The Committee notes that in the first phase of the Operation, approximately 4,000 *garimpeiros* were expelled from the Yanomami area, with some 300 remaining, but that the project is experiencing economic difficulties and it is not therefore possible to impose a sufficiently strict control, as envisaged. The Committee notes that the National Indian Foundation (FUNAI) is urging the Brazilian authorities to take the initiative of reforming economic activity in the Amazon region with a view to improving the ecological and economic situation. It also notes that there are reports of new invasions of the Yanomami area by *garimpeiros*, and requests the Government to continue supplying information on this situation and on the measures taken to protect the Yanomami people from illegal incursions into their territories.

2. *Articles 2 and 27 of the Convention* (responsibility for coordinated action. The Committee notes that the decreased funding allocated to FUNAI has severely limited its activities. The Committee hopes that the Government will provide FUNAI with the necessary means to continue to provide effective assistance to the indigenous populations, and requests it to supply information in its next report on any development in this respect.

3. *Article 10* (protection of human rights). The Committee notes that of the 23 *garimpeiros* who are known to have participated in the massacre of some 70 members of the Yanomami community of Haximu in July 1993, the names of only five were reported, of whom only two were questioned and detained for 160 days, after which they were released. The Committee regrets that the Government was not able to bring any

of those responsible to justice and urges the Government to continue to endeavour to do so.

4. *Articles 11 to 14* (land). The Committee notes the comments received on 24 November 1994 from the Unique Workers' Central (CUT) concerning the displacement of indigenous peoples because of hydro-electric projects, which were sent to the Government on 15 December 1994, and is still awaiting the Government's observations on this matter.

5. *Article 15* (labour). The Committee recalls its previous comments on persistent reports of forced labour of members of the indigenous community imposed by miners and it notes that this type of report is continuing to be received. In this context, the Committee also notes the report received to the effect that between 10,000 and 12,000 Indians are working in the Mato Grosso do Sul area in distilleries and sugar-cane cutting in exploitative conditions. It also notes the Government's statement that it has not been possible to verify the allegations of slavery but that it nevertheless notes that allegations have been made of numerous abuses of the rights of indigenous workers. The Committee trusts that the Government will indicate in its next report any measures which have been taken or are envisaged in relation to these matters.

6. *Articles 19 and 20* (health). For several years, the Committee has been expressing its concern at the health situation of the indigenous population. The Yanomami are particularly affected due to the invasions of *garimpeiros* in their territory, which have given rise to many health problems, including diseases and deaths caused by infection and the forced prostitution of Indian women. In this respect, the Committee also notes that as from February 1994 indigenous communities will continue to receive medical assistance through the National Health Foundation (FNS). It notes that, by virtue of Decree No. 1141 of 19 May 1994, control of the Single Health System will be returned to FUNAI, which will make it possible to provide integrated and specific assistance to indigenous communities. The Committee hopes that the Government's next report will contain information on the operation of the new System. The Committee is grateful for the statistics provided on medical consultations between October 1992 and 1993.

7. The Committee notes with interest the approval of the new *Indian Statute* by the Chamber of Deputies in July 1994, which includes provisions on the legal situation of Indians. The Government is requested to state in its next report whether this legislation has come into force and to supply a copy of it.

[The Government is asked to report in detail in 1996.]

India (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report for the period ending 30 June 1992, which was received in June 1993, as well as the information provided to the Conference Committee in 1993.
>
> It notes the detailed discussions on the question of the *Sardar Sarovar Dam and Power Project* in the 1993 Conference Committee, during which the Conference Committee requested the Government to take urgent measures to bring its resettlement and rehabilitation policies for tribal people into line with the Convention.
>
> *Sardar Sarovar.* The Committee notes the information provided by the Government in its report regarding this project. It recalls that this concerns the construction of a large hydroelectric dam and the consequent removal from their lands of some 100,000 people,

including some 60,000 tribal people. The project was, until recently, being funded by the World Bank. The Committee also notes the statement that "in order to avoid further vitiation of the atmosphere, the Government of India decided to disengage from the World Bank and not to seek any further disbursement out of the outstanding portion of the credit/loan for the Sardar Sarovar project", and that it will complete construction work on its own. It notes further that in October 1992 the World Bank had agreed to continue support for the project contingent on the fulfilment of key criteria involving improvements in policies, organization, management, and the implementation of resettlement and rehabilitation programmes; tighter linkage between progress on resettlement and rehabilitation and dam construction; and strengthened environmental planning and monitoring of potential environmental impacts. The World Bank has indicated in a communiqué that many of the steps called for had been undertaken before the Government's decision, which the Government has also affirmed.

The Committee notes the Government's continuing efforts to rehabilitate and resettle the displaced tribal people, and that an independent commission was appointed in August 1993 to review the project. It notes the detailed statistical information in the report, also communicated to the Conference Committee, on the situation as at July 1992, according to which some persons had been resettled and certain lands had at that point been acquired and designated for resettlement purposes. The Government has also communicated detailed information on spending on rehabilitation. While this indicates that attention is being paid to the resettlement of displaced tribal communities, it is not clear from that information what proportion of displaced families have now been resettled, how many remain to be resettled, and under what conditions. The Committee hopes that the resettlement and rehabilitation measures implemented, or to be implemented in further stages of planned construction, will be done in a manner which complies with the requirements of the Convention. Please continue to supply information on the progress achieved, including future plans for resettlement of the "oustees". Please also include information on any reports the independent commission may have made.

The Committee recalls its previous observation concerning the recognition of rights to land which is "traditionally occupied" by tribal populations (*Article 11 of the Convention*). In referring to the legal position of the tribal population who have long occupied land to which the Government has asserted title, the Committee concluded that the term "traditional occupation" would appear to include the kinds of land use for which no compensation was being given. In its latest report, the Government states that the rights of the traditional occupation of land have been fully acknowledged, but it has also indicated that standard amounts of land are being allocated to relocated tribals. The Committee hopes that the allocation of resettlement land will be based on that previously occupied by the displaced tribals, and requests the Government to continue to provide information in this regard.

Technical cooperation for tribal populations. The Committee notes with interest the establishment of the ILO's Inter-Regional Programme to Support Self-Reliance of Indigenous and Tribal Communities through Cooperatives and other Self-Help Organizations (INDISCO), with funding from the Danish International Development Agency (DANIDA). This programme, which operates in India and in the Philippines, is intended to develop pilot projects aimed at creating employment and income opportunities in close cooperation with the indigenous and tribal communities concerned. The Committee welcomes this initiative and notes also that other technical cooperation in India has been undertaken by the ILO for the benefit of tribal communities. It hopes that the Government will contact the Office for any further assistance that might be helpful in meeting the requirement of the Convention in relation to the comments the Committee has made.

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee wishes once again to take special note of the Government's attention to resolving problems which arise between the indigenous populations of the country and other citizens, in a spirit of dialogue and negotiation. It notes with satisfaction the improvements made in this regard in one region following its 1987 comments. The Committee refers in particular to the detailed information provided on the involvement of indigenous and tribal communities in discussions concerning economic development in the areas in which they live. This does not mean that no problems arise, but it does indicate that they are approached in a spirit of cooperation.

The Committee wishes to draw the attention of all governments whose countries include indigenous and tribal populations to the approach taken in Panama.

At the same time, the Committee notes that there is a wide variety of institutions, including a number of ministries and their subsidiary bodies, working in this field. Recalling the requirement of *Article 2 of the Convention* that "Governments shall have the primary responsibility for developing coordinated and systematic action" in this regard, the Committee hopes that it will be possible to ensure that this principle is applied.

The Committee is also raising a number of questions in more detailed comments addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Brazil, Ecuador, El Salvador, India, Iraq, Pakistan, Panama.*

Convention No. 108: Seafarers' Identity Documents, 1958

Honduras (ratification: 1960)

The Committee notes the Government's brief report indicating that the amendments to the national legislation called for by the Committee in its previous comments had not yet taken place. The Committee recalls that the insertion in the seafarers' identity documents of the statement that they constitute seafarers' identity documents for the purpose of ILO Convention No. 108 *(Article 4, paragraph 2)* is already provided for in Decree No. 462 of 1977. In its previous comments it had also noted that the Ministry of Finance had been requested to have such a statement inserted in the said documents. It trusts the Government will not fail to provide, with its next report, a specimen of the said identity document containing the above-mentioned statement required by the Convention. The Committee wishes to draw the Government's attention to the possibility of seeking the Office's technical assistance in this regard through the Multidisciplinary Advisory Team in San Jose.

Liberia (ratification: 1981)

Further to its previous comments, the Committee notes with satisfaction the information contained in the Government's report and the specimen of the Liberian Seaman's Identification and Record Book containing particulars of the date and place of birth, nationality, physical characteristics and signature or, a thumbprint as required by *Article 4, paragraph 3(b), (d) and (f), of the Convention.*

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Cuba, Guinea-Bissau, Portugal, Romania, Ukraine.*

Convention No. 111: Discrimination (Employment and Occupation), 1958

Algeria (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. With reference to its previous comments concerning the fact that the national legislation does not prohibit discrimination in employment and occupation on the grounds of religion, the Committee notes that the Government repeats its previous statement that religion has never, in practice, given rise to discrimination. It adds that the Committee's observation was brought to the attention of all departments responsible for formulating the texts of laws and regulations, and that it will not fail to inform the Committee of any further developments in this matter. The Committee draws the Government's attention to paragraph 58 *in fine* of its *1988 General Survey on Equality in Employment and Occupation*, in which it points out that "where provisions are adopted in order to give effect to the principle contained in the Convention, they should include all the grounds of discrimination laid down in *Article 1, paragraph 1(a), of the Convention*". The Committee therefore hopes that measures will be taken shortly to ensure that the national legislation includes religion among the prohibited grounds of discrimination in respect of employment and occupation and asks the Government to indicate in its next report any progress made in this respect.
>
> 2. The Committee is raising other points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Angola (ratification: 1976)

1. The Committee notes with interest the Government's statement that the draft of the new General Labour Act is being discussed. The Committee hopes that the Government will keep it informed on the progress of the above draft and of any new regulations or decrees adopted in connection with it, which have a bearing on the principles of the Convention.

2. With reference to its previous comments, the Committee recalls once more that the provisions of the Constitution of 1992 which enshrine the equality of all citizens before the law, without any distinction, do not mention political opinion. The Committee notes with interest in this connection that section 18 of Act No. 23/92 enacting the revision of the Constitution, includes "ideology" among the criteria on which the equality of citizens is established. The Committee understands that the term "ideology" applies to political opinion and would be grateful if the Government would clarify in its next report that the term "ideology" covers the expression or demonstration of political opinions, in accordance with the the Convention, taking into account paragraph 57 of the Committee's 1988 *General Survey on Equality in Employment and Occupation*.

3. With regard to access to education and training, university courses and educational guidance, the Committee recalls that the Government stated in its previous report that far-reaching and comprehensive reforms were under way particularly in the

teaching sector. In its earlier comments the Committee noted that section 6(5)(e) of Decree No. 17/89 of 13 May 1989 issuing the statutes of the Agostinho Neto University provides that the University Council shall ensure the political and ideological training of university administrative staff and graduates. The Committee also noted that section 30 of Decree No. 55/89 of 20 September 1989 to approve the rules governing the University's teaching staff provides that the duties of teachers should include assisting students in their political and ideological training. The Committee notes the Government's statement in its previous report that the removal of all ideological references from the Constitution and the fact that the MPLA-PT is no longer in power imply that any provision which is inconsistent, such as the one in above-mentioned Decree No. 17/89, is without effect. The Committee considers that if the legislation were to be amended expressly in this way, any ambiguity regarding requirements of a political or ideological nature affecting the teaching sector would be removed. Consequently, the Committee trusts that the Government will be able to provide information in its next report on progress made in so amending the legislation.

4. The Committee raises a number of other points in a request addressed directly to the Government.

Argentina (ratification: 1968)

With reference to its previous comments on the elimination of discrimination in public employment on the basis of political opinion, the Committee notes the Government's statement that the situation has not changed in respect of Act No. 22140 of 1980 respecting the basic terms and conditions of employment in the public service. Nevertheless, it notes that its comments on the need for sections 8(g) and 33(g) of the Act, providing that entry into the national public administration can be refused and public servants can be dismissed for belonging, or having belonged, to groups advocating the denial of the principles of the Constitution or for adhering personally to a doctrine of this kind, to be explicitly repealed so as to avoid all uncertainties, particularly since these provisions are not now applied in practice, have been transmitted to the competent official body (Secretariat of the Public Service). The Committee requests the Government to inform it in its next report as to whether these provisions have been repealed.

In this context, the Committee notes with interest the enactment of the new Constitution of 22 August 1994 which, in Chapter IV, article 75(22), gives legal preference to international treaties and agreements over national laws. It would be grateful if the Government would indicate the effect that this constitutional provision has had in relation to the Convention, particularly with reference to the elimination of discrimination in employment on the basis of political opinion.

Australia (ratification: 1973)

1. The Committee notes with satisfaction that helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, is now included as one of the objects of the industrial relations legislation for the prevention and settlement of industrial disputes (section 3(g) of the Industrial Relations Act, 1988, as amended by the Industrial Relations Reform Act, 1993). In addition, the Committee notes that Division 2 (Equal Remuneration for Work of Equal Value) of Part VI A of the Industrial Relations Act, as amended by the 1993 Reform Act, provides that the object of the Division is to give

effect to or further the effect of certain anti-discrimination Conventions, including ILO Conventions Nos. 100 and 111 (section 93A of the Act obliges the Industrial Relations Commission to take account of the principles embodied in Convention No. 156). The texts of these ILO Conventions and their accompanying Recommendations are set out in the schedule to the Act (apart from the text of Convention No. 111 which, as the Industrial Relations Act notes, was already included in the schedule to the Human Rights and Equal Opportunity Act, 1986).

2. The Committee also notes with interest that a National Advisory Committee, comprising high-level representatives of the Human Rights and Equal Opportunity Commission, the federal and state governments, the Australian Council of Trade Unions, the Business Council of Australia, the Australian Chamber of Commerce and Industry and various community and interest groups, was established by the federal Attorney-General in 1993 to advise the Commission on the performance of its functions in relation to equality in employment and to advise the Attorney-General, as requested, on the action that should be taken to comply with the Convention.

3. The Committee is addressing a request directly to the Government on other points.

Bangladesh (ratification: 1972)

The Committee notes the information provided by the Government in its report.

1. For many years, the Committee has asked the Government to supply information on the measures being taken to overcome the obstacles to women's increased participation in employment. It has also sought information on the elimination of sex-based discrimination in vocational training, access to and terms and conditions of employment. In its last report, the Government had indicated that the literacy level of women had been rising since the country became independent, in 1971, and that women were now taking up employment in all sectors, including education. It had also referred to the quotas for women in the public service and in teaching. Among measures being taken to promote the economic well-being of women, the Government's most recent report mentions the upgrading of the pertinent department to the level of a Ministry (and Directorate) of Women and Child Affairs, the introduction of universal primary education and the allocation of funds for stipends especially for female candidates at the primary and secondary school levels.

2. However, the Committee notes from the report of the United Nations Committee on the Elimination of Discrimination Against Women (UN document CEDAW/A/48/38 of 28 May 1993) that the female literacy rate stood at only 16 per cent in 1993. The Committee requests the Government to provide detailed information on the literacy rate of them, and on specific measures being taken to improve female literacy and the results obtained. It also asks the Government to indicate whether these efforts have improved women's access to jobs in both the private and public sectors. As the Government's report contains no comment about the measures taken, or results achieved concerning the effect of reserving posts for women (15 per cent in respect of government posts and 60 per cent for teaching jobs), the Committee hopes that information on this matter, together with any annual reports of the relevant ministries, will be provided in the next report.

3. The Committee also notes, from the above-mentioned report of the United Nations, that the Fourth Five-Year Plan (1990-95) contained strategies to integrate women into the mainstream of sector-based planning, in order to reduce gender disparities. These included a women's credit programme, promotion of female

entrepreneurship, skill development training programmes for different trades, and poverty alleviation programmes for women to become involved in income-generating activities. The Committee requests the Government to supply information on the results obtained by these strategies and to indicate whether any of these, or other measures, are being considered for inclusion in the forthcoming Fifth Five-Year Plan.

4. The Committee is addressing a request directly to the Government on certain other points.

Belarus (ratification: 1961)

1. The Committee notes with interest that a new Labour Code is currently being drafted, revising the Labour Code adopted in 1992, and taking into consideration the Committee's previous comments on the need to expand the list of prohibited grounds of discrimination to include "social origin". The Committee requests the Government to inform it of the adoption of the draft which, it notes, has been submitted to the International Labour Office for technical advice. It would also appreciate receiving a copy of the text when adopted.

2. The Committee is addressing a request directly to the Government on a certain number of other points.

Brazil (ratification: 1965)

1. The Committee notes the information provided in the Government's report, and that supplied at the Conference Committee in 1994 and the debate that followed.

2. *Discrimination based on sex.* The Committee notes that, despite the detailed information provided on administrative and statutory provisions to ban discrimination based on sex, the Conference Committee keenly regretted that Bill No. 229/91 (prohibiting employers from requiring a medical certificate attesting to the sterilization of women workers, which constitutes discrimination on the ground of sex in respect of access to employment) has still not been adopted. It notes that, according to the Government's report, this Bill has reached the last stage of the enactment procedure, namely debate in the Federal Senate. In view of the fact that the Government representative at the Conference Committee expressed the hope that the Bill would become law in 1995, the Committee hopes that the Government will provide information in its next report on the adoption of Bill No. 229/91, as well as Bill No. 667/91 which prohibits the employer or a person acting on the employer's behalf from requiring a gynaecological examination of female officials.

3. With regard to equal access to vocational training, the Committee notes the information supplied in the report to the effect that Bills Nos. 45/91 and 52/91 were submitted to the Chamber of Deputies, and are to establish the Fund for the Vocational Training of Women, to be linked to the Ministry of Labour and governed by a board on which the public authorities and women's associations will be equally represented. Please provide information on the adoption of these Bills, together with copies of them.

4. *Discrimination on grounds of race, colour or national extraction.* With reference to the employment situation of Blacks and Mulattos, the Committee notes the information supplied by the Government representative to the Conference Committee, which is repeated in the Government's report, to the effect that only two complaints of racial discrimination were submitted to the Ministry of Labour. The first, in the state of Bahia, was considered to be irreceivable, and the second, which concerned discrimination in a job advertisement, was settled by the removal of the offending words.

5. Noting that the Government representative referred to the role of workers' organizations in enforcing observance of anti-discrimination laws, the Committee asks the Government to send detailed information in its next report on the measures that have been taken to strengthen the supervisory machinery, with examples if possible of the action taken by the unions, including the Unique Workers' Central (CUT), to protect the rights of workers, so that they are not subjected to discrimination in their employment on grounds of their colour, race or national extraction.

6. Please indicate also the measures taken to pursue a policy of protection against discrimination based on colour, referred to in the Government's report as "one of the principal demands that have been discussed with the Black movements in the country".

7. *General policy on equality in employment*. The Committee notes the information on the national policy to promote equality of opportunity and treatment in employment, and takes particular note of the statement made by the Government representative regarding the problems of monitoring and investigating infringements of the law in practice. Consequently, the Committee asks the Government to provide information on the work of the National Labour Council (CNTb) and its results in this area (breaches of contract, agreements reached, appeals to courts).

8. Lastly, the Committee regrets that such serious problems exist in practice despite the legislation in force against discrimination in employment. It recalls that the Government representative mentioned that in May 1994 the Ministry of Labour agreed to the ILO's offer of a technical assistance mission. The Committee asks the Government to provide information on the results of this technical cooperation, which — it recalls — was proposed by the Conference Committee in 1994.

Bulgaria (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read, in pertinent part, as follows:

[...]

> 2. *Constitutional Court decisions concerning equality of opportunity and treatment*. The Committee notes from a Constitutional Court ruling (No. 8 of 27 July 1992) that under section 9 of the Preceding and Concluding Provisions of the Banks and Credit Activity Law, No. 25 of 1992, "persons who have been elected members to central, county, district, town and municipal leading bodies of the Bulgarian Communist Party, Dimitrov Communist Youth League, the Fatherland Front, the Union of Veterans in the Struggle against Fascism and Capitalism, the Bulgarian Trade Unions and the Bulgarian Agrarian Party or have been employed full time as high-ranking officials at the Central Committee of the Bulgarian Communist Party, as well as staff, and paid or non-paid collaborators of State Security may not be elected to the Banks' Boards and may not be employed under section 7" over the next five years. This provision was found by the Court to be contradictory to ILO Convention No. 111, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and to article 6(2) of the Constitution, which prohibits any privileges or restrictions of rights on specified grounds including convictions and political affiliation. The Court, holding international obligations to be indispensable to national law and to have priority over conflicting provisions of national legislation, found the above restriction of the right to hold a high-ranking position in the governing bodies of banks to constitute discrimination within the meaning of Article 1 of Convention No. 111 and thus not to be in conformity with the terms of an international agreement to which Bulgaria is a party.
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> 3. The Committee also notes from a Constitutional Court ruling (No. 11 of 29 July 1992) that, under section 6 of the Act Amending the Pensions Act of 12 June 1992, a new section was added to the Pensions Act to exclude any duration of a person's employment in a full-time management position in specified political bodies (the Bulgarian Communist Party,

the Fatherland Front, the Dimitrov Communist Youth League, the Fighters against Fascism and Capitalism) as counting for pensionable service. The Court found this section to be in violation of the guaranteed right to social security provided in article 51(1) of the Constitution. In addition to the Court's conclusion that within the effective legal framework a pension is still employment-related and thus the existence of other non-employment correlatives, characteristics or grounds for pension entitlement does not eliminate the link between employment and the social security relationship, the Court stated that in any case the general categorization of such exclusions creates an arbitrary approach that goes beyond the sphere of fairness and lawfulness.

4. The Committee notes the above two Constitutional Court decisions with interest and requests the Government, in its next report, to provide information on the implementation of these two rulings. It would also be grateful if the Government would provide copies of the two laws examined by the Court and of any other legislation which contains similar restrictions on access to employment or particular occupations or in terms and conditions of employment, as well as any relevant Court decisions concerning such legislation.

5. *Measures directed at improving the position of the minority of Turkish origin.* With reference to its previous observations concerning former measures aimed at suppressing the cultural identity of the minority of Turkish origin in Bulgaria, which had been the subject of comments received in 1989 from the Confederation of Turkish Labour Real Trade Unions, the International Confederation of Free Trade Unions and the International Organization of Employers, the Committee recalls that in 1990, 1991 and 1992 it had taken note of various measures, including: the adoption of a decision by the Council of State and the Council of Ministers and a statement by the National Assembly to put an end to the above-mentioned violations of the principle of equality; the adoption of the Political and Civil Rehabilitation of Repressed Persons Act aimed at restoring the rights of persons who had been wrongfully repressed on account of their origin, political or religious convictions; and the adoption of various other Acts and programmes to enable persons who had suffered discrimination to be able to obtain redress. The Committee had asked the Government to provide further information on the implementation of the new policies and measures and on the results achieved.

6. The Committee recalls that article 36(2) of the Constitution provides that citizens whose mother tongue is not Bulgarian have the right to study and use their own language alongside the compulsory study of the Bulgarian language. It also recalls that the National Education Act of 18 October 1991 and the Council of Ministers Decree No. 232 of 29 November 1991 on mother tongue study in the municipal schools provide for the right to study one's mother tongue outside state schools and, on a test basis, as an optional subject inside municipal schools in ethnically mixed communities during the school year 1991-92. The Committee again requests the Government to provide information on the holding of such classes for Turkish-speaking students, the evaluation of the optional mother tongue courses including statistics on the number of students involved, its continuation and extension to languages other than Turkish as well as information on any other measures taken to overcome the problem of low educational levels in the Turkish communities.

7. With reference to its previous comments concerning the adoption of the Political and Civil Rehabilitation of Repressed Persons Act, on 25 June 1991, which restores the rights of persons who had been wrongfully repressed on account of their origin, political or religious convictions between September 1944 and November 1989, the Committee notes with interest the adoption of the Council of Ministers Decree (No. 139 of 21 July 1992) on the application of section 7 of the above Act and the adoption of the Council of Ministers Decree (No. 249 of 9 December 1992) on the adoption of an Ordinance relating to the application of section 4 of the above Act. According to the Government's report, the two Decrees enable the application of the Act by setting out the specific procedural requirements, the categories of compensation and the amounts of compensation which are intended to cover losses incurred in employment and occupation. The Government reports that, in order to receive

compensation, persons must first apply to the appropriate ministries for attestations of their arrests, internments and sentences, then lodge written complaints with bodies of the Ministry of Finance. Furthermore, a Central Committee and regional committees for Political and Civil Rehabilitation have been established to help investigate and determine the circumstances of cases. The Committee requests the Government to supply copies of the two Decrees with its next report and to provide information on the application in practice of the Act including the number of people who have applied for compensation and the number who have received it. The Committee also requests the Government to indicate whether any measures of assistance are being given to help the repressed persons who were dismissed from their employment or occupation be reinstated or find other employment.

8. With regard to measures taken to assist persons of Turkish origin who returned to Bulgaria after having left the country as a result of the earlier policy, the Committee recalls that more than 220,000 such persons who had left the country had returned between June 1989 and June 1990 facing major problems of housing, education and employment. The Committee recalls that, following a first unsuccessful initiative to solve the social problems of the returnees, the Government had adopted a new approach through the adoption of Decree No. 170 of 30 August 1990 which was aimed at providing restitution of real estate to the Turkish people who had been forced to sell. The Government reports that, as a result of the claims of the bona fide purchasers of the real estate and their filing a case before the Constitutional Court, the Government has reversed its approach and adopted the Restitution of the Ownership of Real Estate to Bulgarian Citizens of Turkish Origin who Applied to Leave for the Republic of Turkey and Other Countries in the May-September 1989 Period Act, 1992, which is envisaged to restore the property to the purchasers and to compensate the seller returnees. The Committee requests the Government to provide a copy of the Constitutional Court decision, as well as a copy of the new Act and to indicate the manner in which the Act is being applied. It further draws the Government's attention to the provisions of Decree No. 170 which had provided for six months' compensation to those returning workers who had been dismissed from their employment and who are registered as unemployed but not receiving compensation pursuant to other laws. It requests the Government to indicate whether these provisions remain in force, and if not whether any other measures have been taken so as to continue to provide such unemployment compensation to the returnees.

9. The Committee notes from the Government's report that, as a result of exacerbated recession and rising unemployment, about 120,000 people emigrated from the country in 1990-91 and that a fresh wave of emigration to Turkey occurred in 1992. Note is also taken of the relief money paid by the Government to workers who applied to leave for Turkey. The Committee requests the Government to indicate whether any special measures are being taken or are contemplated to assist persons of Turkish origin who wish to stay and work in Bulgaria, in particular the returnees, in obtaining access to vocational training, employment or to particular occupations, including any measures taken by employment placement offices. The Committee also refers to its comments below.

10. *General measures to promote equality.* The Government reports that increasing negative economic trends and rising unemployment make the adoption of appropriate measures to promote equal opportunity amongst various groups difficult, particularly given the manifest regional irregularity of unemployment. The Ministry of Labour and Social Affairs has undertaken studies on unemployment that reveal that the municipalities with ethnically mixed populations comprise the majority of those which are having the most severe economic and employment difficulties. Noting this situation, the Committee welcomes the efforts being undertaken by the Government to attempt to address the problems of particularly vulnerable groups, such as through the adoption of the basic principles of the policy of the Ministry of Labour and Social Affairs which specifically include special protection to ensure employment for vulnerable groups in the labour market and prohibition of discrimination in job searches; the development of the programme for literacy courses, training and

employment in quarters with ethnically mixed populations in consultation with the Confederation of Labour and the Confederation of Independent Trade Unions; the programmes for restructuring and ensuring alternative work in the Madan and Rudozem Municipalities, which are ethnically mixed; the employment programme in Velingrad; and the other programmes for the disabled and young persons. The Committee requests the Government to provide information on the implementation of these programmes and on their impact in reducing the disproportionate economic burdens on the racial, ethnic and religious minority groups in the country in terms of their access to vocational training, access to employment and to particular occupations, terms and conditions of work and security of employment. The Committee also requests the Government to indicate the steps taken to foster understanding and tolerance between various groups of the population.

11. The Committee notes that the Human Rights Committee has replaced the previously existing Human Rights and Ethnic Issues Committee as a body of the Grand National Assembly and that it has the main functions of reviewing bills, draft decisions, declarations and addresses, preparing reports and taking stands on them. The Committee would be grateful if the Government would continue to submit information in future reports on the activities of the Human Rights Committee that are related to the application of the Convention.

12. The Committee requests the Government to provide information on measures taken or contemplated to promote equality of opportunity and treatment between women and men and the results obtained with regard to access to vocational training, access to employment and to particular occupations, terms and conditions of employment and security of employment.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Burkina Faso (ratification: 1962)

With reference to its previous observation, the Committee notes with satisfaction that the new Labour Code (Act No. 11/92 of 22 December 1992), in section 1(3), lists religion among the grounds of prohibited discrimination.

The Committee is addressing a request directly to the Government on other matters, in particular concerning the Labour Code.

Canada (ratification: 1964)

The Committee notes the detailed information supplied by the Government in its report and attached documentation.

The Committee notes with interest the new Saskatchewan legislation, namely the amendment made to the Human Rights Code to include protection against discrimination based on sexual orientation, family status and receipt of public assistance, the new Occupational Health and Safety Act, 1993, imposing a duty on employers to take action against harassment at the place of employment, and the Labour Standards Amendment Act, 1994, prohibiting an employer from dismissing an employee because of absence due to illness or injury. The Committee also notes with interest the adoption by the Quebec Human Rights Commission of guidelines on discrimination on grounds of pregnancy and social condition, and the Employment Equity Act, 1993 of Ontario, which contains provisions to further equality in employment for four designated groups (aboriginal people, people with disabilities, members of racial minorities and women) similar to the groups designated in the Federal Employment Equity Act, 1986.

The Committee is addressing a request directly to the Government on certain other points.

Colombia (ratification: 1969)

1. The Committee notes with satisfaction the adoption, following receipt of technical assistance from the Office, of Ministry of Labour and Social Security resolution No. 3716 of 3 November 1994 which restricts the requirement of a pregnancy test for obtaining employment in both the private and public sectors to employment or occupations where pregnancies might be at risk. It also notes with satisfaction the adoption of resolution No. 3941 of 24 November 1994 which specifies that such employment and occupations shall be only those listed as "high risk" in Decrees Nos. 1281 and 1835 of 1994. It also notes with interest the copy of the Ministry of Labour's circular, addressed to all regional labour directors and labour inspectors, recalling the importance of verifying compliance with the constitutional provisions on equality of opportunity between men and women, including the elimination of sex-based discrimination and sexual harassment.

2. The Committee also notes with satisfaction the Constitutional Court ruling of 21 April 1994 which declares unconstitutional the listing, by virtue of section 1 of Act No. 61 of 1987 on the career public service, of certain posts as exceptions to the career public service. The ruling refers, among others, to those exceptions raised in previous observations as being potentially discriminatory since they left a large number of general posts classified as "posts of free appointment and dismissal", namely subsection (j) concerning part-time posts; and subsections (f), (g) and (i) concerning the General Directorates of Customs and Taxes and public employees of state-run industrial and commercial establishments which were held to be constitutional subject to the condition that the posts do not, by their content, correspond to public career posts or that they refer to directorate-level posts or posts of confidence. According to the Government's report, this ruling clarifies that "posts of free appointment and dismissal" are only those at the directorate level or, exceptionally, those at other levels involving positions of trust. The effect of the ruling is that these posts have become posts of the career public service, and only those limited exceptions allowed by *Article 1, paragraph 2 of the Convention* remain subject to free appointment and dismissal.

3. With regard to its previous request for copies of any texts regulating access to and conditions of employment in certain posts excluded from the career public service, the Committee notes with interest Decree No. 1221 of 28 June 1993 concerning capacity building in the national public service and Decree No. 1222 of the same date (amended by Decrees Nos. 256 and 805 of 28 January and 21 April 1994) prescribing the rules for selection, promotion and evaluations in the career public service, which now cover those posts deemed to be within the career public service following the above-mentioned Constitutional Court ruling.

4. These texts have been adopted by virtue of new legislation which also has an impact on the Committee's previous observation. Act No. 27/1992, which entered into force on 3 February 1993, to amend the Career Public Service Act No. 61 of 1987 — and Decree No. 256 mentioned above — state that access to and capacity building and promotion within the public service shall take place through systems which allow for democratic participation in a context of equality of opportunities. According to section 2, the Act also extends the career public service system to those posts previously not covered, such as employees of territorial administrations. In addition, the Committee notes with satisfaction implementing Decree No. 1224 of 28 July 1993, which prescribes the steps to be taken by such state employees for entry into the career public service.

Cuba (ratification: 1965)

1. The Committee notes the information supplied by the Government at the Conference Committee in June 1994 in reply to its previous comments, and the discussion that followed. The Committee notes in particular the Government's statement that Legislative Decree No. 147 of 21 April 1994 provides for the reorganization of the bodies of the central administration of the State in order to adapt them to the amendments to the national Constitution, present social conditions and the changes under way in international trade and relations. The Committee asks the Government to indicate to what extent these reforms are affecting the application of the Convention.

2. Further to its previous comments on the students' accumulated school records, the Committee notes with satisfaction that all entries other than those concerning academic matters have been removed from the new model students' accumulated school record, of which the Government provided a copy.

3. *Conditions of employment.* The Committee recalls that the Latin American Central Organization of Workers (CLAT) alleged in 1992 that 14 university teachers had been dismissed for having expressed their political opinions, in accordance with their constitutional rights, in an eight-point "declaration of principles" which they signed and sent to their immediate superiors. The Government replied that inquiries into the matter showed that the teachers in question no longer had the essential qualities required for teaching and that Legislative Decree No. 34 of 1980, which provides that the dismissal of teachers in higher education may be decided upon by the rectors of universities and is subject to appeal, was applied. Nine of the teachers dismissed had appealed to the Minister of Higher Education but their appeals were dismissed.

The Committee again urges the Government to explain what it means by "essential qualities required for teaching". While noting that the Government again states that the teachers concerned were offered jobs but refused them, the Committee asks the Government to indicate what means of redress, other than the above-mentioned procedure of appeal to the Minister of Education, are available to these workers as protection against any discriminatory practices based on any of the grounds in the Convention, particularly political opinion.

4. The Committee notes that, according to the Government, the whole inspection system of the Ministry of Education is in the process of being changed. The Government also indicates that Legislative Decree No. 34 of 1980 (based on the principle that "persons who are in contact with young people in the education process serve as an example in forming young persons as communists" allows the dismissal of members of the staff of higher education and other educational institutions who come into direct contact with students for, amongst other things, "activities that are contrary to socialist morals and the ideological principles of society") will be revised and amended to bring it into line with Legislative Decree No. 147 mentioned above. The Committee asks the Government to keep it informed in this respect and hopes that its comments will be taken into account when the text is revised. It asks the Government to provide a copy of the amendments as soon as they have been adopted.

With regard to Resolution No. 2 of 20 December 1989 respecting the reinstatement of the educational workers to whom Legislative Decree No. 34/80 applied (dismissed for one of the activities listed in Legislative Decree No. 34/80, see paragraph above), the Committee observed that these workers may only be reinstated after completing five years' disciplinary work, during which they are excluded from the education sector. The Committee notes that, according to the Government, this period may be reduced to a period of less than five years with a view to reinstatement.

The Committee is bound to recall that this legislation is drafted in very broad terms and could therefore give rise to practices which discriminate against any worker coming into contact with young people in the education process, enforceable by penalties which exclude them from their employment for a long period. It considers that these provisions are not consistent with the principles of the Convention and points out that they would only be in line with the Convention if they dealt with qualification requirements for certain jobs involving special responsibilities. In paragraph 126 of its 1988 *General Survey on Equality in Employment and Occupation*, the Committee stressed that "certain criteria may be brought to bear as inherent requirements of a particular job, but they may not be applied to all jobs in a given occupation or sector of activity, and especially in the public service" without coming into conflict with the principle of equality of opportunity and treatment in occupation and employment. The Committee asks the Government to take the necessary steps to have these legislative provisions repealed in the near future, as required by *Article 3(c) of the Convention*. It trusts that the next report will contain information on progress made in this respect.

5. The Committee notes with interest the repeal of Resolution No. 50 of 1987 regulating the evaluation of the work and pay of journalists by Resolution No. 17 of 16 November 1993 which has the same objectives and, in particular, the amendment to section 3(b) on which the Committee had commented. It would be grateful if the Government would provide information and examples, in its next report, on the practical application of section 3 which lists the indicators used in evaluating the results of the work of journalists (with implications for their wages and their maintenance in the job), particularly "the scope and repercussions among the public of their activities" (subsection (c)).

6. The Committee recalls that the Government announced in an earlier report that Resolution No. 51 of 12 December 1988 regulating the application of the employment policy was to be revised and that a draft was being discussed on a tripartite basis. Since the draft regulations on employment policy define, amongst other things, the content of professional records (the Committee has noted the sample provided by the Government), the Committee again asks the Government to provide information in its next report on the status of the draft and to provide a copy of the text as soon as it has been adopted.

7. *Access to training*. With regard to the system of admission to post-secondary or higher education, the Committee notes that Resolution No. 1 of 1993 has been replaced by Resolution No. 1 of 11 March 1994 for the university year 1993-94. It also notes the information on the role played by the students' collective in the education process. The Committee asks the Government to explain the nature of the "consultations" provided for in section 21 of Resolution No. 1/94 between the university authorities and, in particular, the Communist Party of Cuba and the concerned trade unions. Please indicate whether, in the context of these consultations, criteria other than qualification criteria are used to evaluate and, if the case arises, to exclude a candidate (the Committee had noted in its 1992 observation that a "spirit of collectivism" was required for directorial posts in education).

8. *Access to employment*. With regard to the "personal verification form" containing information on the worker's moral attitude and social conduct, the Committee notes the Government's statement that the general inquiry into the internal rules of certain enterprises has been completed and future rules will not contain anything that might be considered as contrary to the Convention, which will remove any ambiguity. The Committee asks the Government to send copies of the new rules, to state the nature of the measures taken in this respect by the labour inspectorate and to continue to keep it informed on the matter.

9. With regard to posts in the administration of the State, the Committee notes that the Government repeats its previous statements: the posts which are controlled by the Communist Party of Cuba are those falling within the institutional structure established by Legislative Decree No. 67 of 1983 respecting the organization of the central administration of the State, and that the only posts involved are certain political and high-level offices (ministers, deputy ministers, presidents, vice-presidents and certain executive posts which each institution determines according to its specific requirements). The Committee recalls that requirements of a political nature must be restricted to certain high-level posts directly related to government policy in order to be consistent with the Convention. The Committee asks the Government to continue to keep it informed of any developments in this respect.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Dominican Republic (ratification: 1962)

1. With regard to its previous comments on the need for detailed information on the activities of the Labour Inspectorate concerning the application of the legislation prohibiting discrimination in employment against Dominican workers of Haitian origin, the Committee notes the Government's statement that the Labour Inspectorate has been engaged in efforts to prevent such discrimination and to ensure proper compliance with the relevant provisions of the labour law. It notes in particular the Government's statement that, in practice, there have been no occurrences which indicate that there is discrimination against Dominican workers of Haitian origin. It also notes the report of the Labour Inspectorate for the period January to May 1992 (including the statistics), which describes inspections of sugar plantation installations to supervise, in particular, cane weighing, pay and conditions of hygiene, but which does not state whether there are any cases of discrimination against these workers.

The Committee asks the Government to refer to its comments under Convention No. 105 on protection by the competent authorities of the rights of sugar-cane workers.

2. The Committee is addressing a request directly to the Government on certain other aspects of the Convention.

Ecuador (ratification: 1962)

1. The Committee notes with interest the Government's statement that section 66(6) of the Commercial Code, which restricts the admission of women to the Stock Exchange, has fallen into disuse and is not applied. This is plain from the list of brokerage firms registered at the Quito Stock Exchange, in which the names of women stockbrokers are highlighted, and which shows, according to the Government, that women are admitted to the Stock Exchange. It also notes the Government's statement that it reiterates its commitment to expedite the procedure in the National Congress for the adoption of the legal reforms to bring the national legislation into full conformity with the Convention, and the photocopies of the communications sent by the Minister of Labour to the President of the National Congress asking that the reforms of the Commercial Code and the Act on Cooperatives be expedited. The Committee hopes that the Government will report on progress in this respect in its next report.

2. The Committee raises other matters in a request which it is addressing directly to the Government.

Egypt (ratification: 1960)

The Committee notes the Government's report on the application of the Convention.

1. The Committee recalls that Presidential Decree No. 214 of 1978 concerning the principles of protection of the home front and social peace contains, inter alia, a provision under which "any person who is convicted of maintaining principles contrary to, or conflicting with, the divine laws may not occupy a senior post in the public administration or the public sector, publish articles in the newspapers or perform work in any organ of information or perform any other work that may influence public opinion". Two laws adopted under this text, namely Act No. 33 of 1978 on the protection of the home front and social peace, and Act No. 95 of 1980 concerning the protection of values, contain similar provisions. Under section 2 of Act No. 33, "any person convicted, following an investigation by the Socialist Public Prosecutor ... of advocating or of complicity in advocating doctrines which involve the rejection of the divine laws or which are contrary to their teachings, may not occupy a senior post in the State or the public sector whose attributions include the issuing of directions or orders, or a post which has a bearing on public opinion, or any post as a representative member on executive boards of public bodies and enterprises or press establishments". Under section 4 of Act No. 95, any person proved guilty of violating the fundamental values of the people, including their rights and religious values, is prohibited for a period of six months to five years from "being a candidate to, or occupying, the posts of chairman or of member of steering committees or governing boards of public companies or bodies" and from "occupying posts or performing functions which may influence public opinion or which are related to the education of future generations". Under the same section, the persons in question are transferred to another post, retaining their wages and seniority rights "unless they are deprived of them on legal grounds".

The Committee notes that the Government reiterates its position that these laws are not contrary to the Convention since they do not call for discrimination in employment on religious grounds, and that such discrimination is prohibited by law. It also notes that the Government considers that *Article 4 of the Convention* allows the punishment of persons who could impair the security of the State, cause civil conflicts and represent a threat to society. The Government states that the provisions of the 1978 and 1980 Acts are not applied in practice. The Committee recalls that the expression of opinions or religious, philosophical or political beliefs is not, in itself, a sufficient base for the application of the exception set out in Article 4 of the Convention for activities prejudicial to the security of the State, provided that those who advocate them do not resort to or incite violent methods. The Committee asks the Government once again to refer in this connection to paragraph 135 of its 1988 *General Survey on Equality in Employment and Occupation*.

The Committee therefore asks the Government to reconsider its position and to adopt measures to ensure that a distinction is made (as regards access to employment and terms and conditions of employment) between the *expression of certain opinions* and *recourse to violent methods* aimed at fundamental changes. The Committee points out that in the above-mentioned *General Survey*, it recalled in paragraph 127 that "criteria such as political opinion, national extraction and religion may be taken into account in connection with the inherent requirements of certain posts involving special responsibilities, but that if carried beyond certain limits, this practice comes into conflict with the provisions of the Convention".

2. The Committee recalls that, in its previous comments, it also raised the incompatibility of section 18 of Act No. 148 of 1980 respecting the power of the press,

with the principles of the Convention. Section 18 forbids the publication, participation in the publication or the ownership of newspapers by certain categories of persons: those who are prohibited from exercising their political rights; who are banned from setting up or joining political parties; who profess doctrines that reject divine laws; and who have been convicted by the Court of (Moral) Values. The Committee also noted that Act No. 33, mentioned above, imposed restrictions, enforceable by disciplinary sanctions, on members of the journalists' trade union in respect, in particular, of the freedom to publish or disseminate through the press or any other information media articles prejudicial to the "democratic socialist regime of the State" or "to the socialist achievements of the workers and peasants". The Government indicated that section 18 does not restrict the right of any citizen to express his or her views through the various information media and that Act No. 148 would be repealed on the occasion of the revision of the law of the press. In its present report, the Government expresses surprise that the persons covered by Act No. 148 can be protected by the Convention.

The Committee recalls that these legislative provisions, to the extent that they establish discrimination based on political opinion which has the effect of nullifying or impairing the equality of opportunity and treatment in employment and occupation of these people, are contrary to *Article 1, paragraph 1(a), of the Convention*. The Committee trusts that, during the revision of the national legislation announced by the Government in a letter of 28 January 1992, the Government will take into account all its comments and will do everything in its power to ensure that the above-mentioned provisions are brought into conformity with the Convention in the very near future. It asks the Government to keep it informed of any measures taken to this end, and to inform it of any court decisions relevant to this point.

3. With regard to the employment situation of women, the Committee notes that, in reply to its previous comment, the Government indicates that it will shortly send a detailed report on this matter. It would be grateful if, with the report, the Government would send statistical data of the number of women holding high-level posts, and the sectors concerned, together with information on the specific measures for the promotion, in practice, of equality between men and women in employment. It asks the Government to provide information on any measures taken in the area of education and vocational training as regards the 1992 proposals of the Ministry of Manpower and Training, contained in the Government's strategy for employment, to encourage women to stay at home and to establish secondary schools to train women in household work, home-based production and small-scale projects. Recalling that, in the above-mentioned *General Survey*, the Committee pointed out that "the use of standards of general education that differentiate between men and women, as is the practice in some countries, very soon leads to discriminatory practices based on sex" (paragraph 78), the Committee again asks the Government to provide detailed information on the vocational guidance criteria used to assess women's skills and tastes.

4. Noting that in 1994 the Office provided technical assistance in revising the Labour Code, the Committee asks the Government to inform it of the adoption of the final text and to provide a copy of it.

5. The Committee is addressing a request directly to the Government concerning other points.

Ghana (ratification: 1961)

1. The Committee notes the entry into force, on 7 January 1993, of the new Constitution of 28 April 1992, and the new Civil Service Act of 1 January 1993.

2. With reference to its previous observations, the Committee notes with satisfaction that the provisions in the Civil Service Act, 1960, which had allowed the President to dismiss a civil servant without an appeal, have not been included in the new Civil Service Act.

3. The Committee requests the Government to inform it how the present security situation is affecting the application of the Convention in practice throughout the country.

4. The Committee is addressing a request directly to the Government on certain other points concerning the new Constitution and the Civil Service Act.

Guinea (ratification: 1960)

1. The Committee notes with interest the Government's statement in reply to its previous observations that all the usual codes and other texts (decrees, orders, decisions, collective agreements) are currently being examined with a view to their harmonization with the Fundamental Act of 23 December 1990 and ratified international instruments. It adds that the new public service regulations are currently being finalized with a view to the harmonization of the former provisions with those adopted recently since the political changes in April 1984. The Committee would be grateful if the Government would supply detailed information in its next report on the progress achieved in this regard and if it would provide the text of the codes, decrees, orders, decisions and collective agreements which are currently being harmonized with the Fundamental Act and the Convention, as soon as they have been adopted, and in particular the new text governing the public service which, it appears, will amend Ordinance No. 017/PRG/SGG of 5 March 1987.

2. The Committee is addressing a request directly to the Government on other points.

Guyana (ratification: 1975)

The Committee notes with interest that the Equal Rights Act 1990 (Act No. 19 of 1990), which provides for the enforcement of the equality principle enshrined in *Article 2 of the Convention*, makes illegal all forms of discrimination against women or men on the basis of their sex or marital status and amends a wide range of legislation so as to accord women equal rights with men.

In this regard, the Committee recalls that in its previous comments, it had referred to section 22 of the Public Officers (Insurance) Act, 1902 (Cap. 27:01), which excluded female public officers from the Act (which made provision for the widows and orphans of public officers by requiring such officers to insure their own lives). The Committee notes with interest that the Equal Rights Act inserts in section 22 a clause providing that no male officer who is not already insured under the Act will be required to be so insured from the date of commencement of the Equal Rights Act; and that it amends the Public Officers Widows Act, 1920 (Cap. 27:02) by introducing into the legislation, gender-neutral terminology so as to entitle both male and female spouses of deceased public officers or pensioners to receive the financial benefits laid down in the Act.

The Committee is addressing a request directly to the Government on other points.

Iraq (ratification: 1959)

1. The Committee notes the Government's report and observes that it contains few answers to its comments.

2. The Committee had asked for information on the implementation of a national policy to promote equality of opportunity and treatment, as provided for by *Article 2 of*

the Convention in respect of citizens belonging to the country's ethnic and linguistic minorities, such as the Kurdish and Turkoman minorities — a point which has also been discussed by other bodies within the United Nations system, including the Committee on the Elimination of Racial Discrimination. Since the Government has not answered the Committee's comments on this point, the Committee recalls that the Conference Committee expressed deep concern about these minorities and asked the Government to provide information on their situation with regard to equality of opportunity and treatment, and how the latter is ensured in practice.

The Committee refers once again to Chapter IV of its 1988 *General Survey on Equality in Employment and Occupation* and, in particular, to paragraphs 158 and 159. It draws the Government's attention to the fact that Article 2 of the Convention requires a national policy for the promotion of equality of opportunity and treatment in respect of employment and occupation to be declared and pursued and that, in order to apply the Convention, the legislative provisions which are in force have to be accompanied by clearly stated practical measures to implement the principles of equality. The Committee once more asks the Government to provide detailed information on the adoption and implementation of a national policy to promote equality of opportunity and treatment in respect of employment and, more particularly, its application to the Kurdish and Turkoman minorities.

3. With regard to women's employment, the Committee notes that, according to the Government's report, Resolution No. 480 of 1989 concerning the employment of women graduates in the state administration and the socialist and mixed sectors, under which certain posts may not be held by women, has been suspended by Order No. 76 of 2 May 1993. The Committee asks the Government to provide the text of this Order with its next report. It also asks the Government to indicate the number of women *holding high-level posts* in the public sector, their percentage in relation to that of men, and statistical tables on their classification.

4. The Committee notes the Government's statement that women participate in vocational training courses on an equal footing with men and that it will shortly provide information on the number of courses organized by the General Federation of Iraqi Women. It asks the Government to send this information with its next report, together with information on the type of vocational training provided in the country, the number of students and the proportion of male and female students, and the actual results obtained in promoting women's employment.

Italy (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. Further to its previous direct requests, the Committee notes with interest the adoption of the Act on Affirmative Action for Women in Entrepreneurial Activity (No. 215), dated 25 February 1992, which promotes the creation of enterprises staffed and managed predominantly by women in the agricultural, crafts, commercial and industrial sectors, and the development of cooperative societies and companies in which women make up the majority of partners or at least two-thirds of the directors, through the provision of incentives, credit and financing arrangements and the establishment of a Committee on Entrepreneurial Activity by Women in the Ministry of Industry. The Committee would be grateful if the Government would provide information on the implementation of the legislation and the results achieved in the various activities provided for under the Act.
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> 2. The Committee also notes with interest the information given by the Government on the implementation of Act No. 125 of 10 April 1991 on positive action for the attainment of

equality between men and women at work. It notes in particular that pursuant to the Act, 49 affirmative action programmes submitted by companies have already been approved and are under way, and that the National Committee for the Application of the Principles of Equality between Men and Women Workers and the Board of Inquiry have become fully operational. The Committee requests the Government to indicate the criteria upon which programmes are approved under the Act, and the results achieved in terms of the goals and timetables set in the various programmes to attain equal opportunity and treatment in the workplace between men and women. It hopes that the Government will continue to provide information on the activities of the National Committee and the Board of Inquiry and will communicate the findings of the report scheduled to be prepared in 1992 on the position of men and women workers based on information submitted by private and public enterprises under section 9 of Act No. 125.

3. The Committee recalls that a number of collective agreements have included special clauses designed to promote equality of opportunity and treatment between men and women, establishing joint committees to that end and prohibiting sexual harassment. The Committee would be grateful if the Government would supply information on the implementation of those clauses in practice and on the activities of the joint committees.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1963)

1. With reference to its previous observation concerning the implementation of the recommendations of the Committee set up by the ILO Governing Body to examine the representation made under article 24 of the ILO Constitution concerning, in particular, the employment situation of the Mauritanian nationals who were displaced in 1989 during the conflict with Senegal, the Committee notes the information provided by the Government in its brief report.

2. The Committee takes due note of the Government's general indication that anyone providing proof that he or she is of Mauritanian nationality and has held a job in Mauritania has had his or her entitlements re-established. So that it can ascertain the progress made in the implementation of the above-mentioned recommendations of the Governing Body Committee, the Committee asks the Government to provide details of the measures taken in practice to provide adequate compensation to Mauritanian workers whose employment was adversely affected (loss of job, wages, acquired social rights) as a result of being forcibly displaced. It would appreciate in particular detailed information on the measures taken (and the results obtained, backed up by statistical data) to implement the decision taken in November 1993 by the Joint Mauritanian-Senegalese Committee, concerning payment by the bodies responsible of retirement pensions and wages in arrears to the respective nationals of the two countries for the period that has elapsed since April 1989. It also asks the Government to provide detailed information on the implementation of the government programme for the reintegration into the labour market of the workers who suffered as a result of these events and the results obtained, for example, the number of public employees and civil servants who have been reintegrated into the public administration as compared to those who had to leave the country following the events of 1989.

3. The Committee is addressing a request directly to the Government concerning other points.

New Zealand (ratification: 1983)

The Committee notes with interest the detailed report and annexed documents provided by the Government on the measures taken to apply the Convention. The Committee has also noted the comments of the New Zealand Employers' Federation (NZEF) and the detailed communication received from the New Zealand Council of Trade Unions (NZCTU). It notes, in addition, the Government's response to the comments of the NZCTU.

1. *Legislation*. The Committee notes that the Human Rights Act, 1993, which came into force on 1 February 1994, lists the prohibited grounds of discrimination as "sex (which includes pregnancy and childbirth), marital status [...], religious belief, ethical belief (which means the lack of a religious belief [...]), colour, race, ethnic or national origins (which includes nationality or citizenship)", disability, age, political opinion, employment status, family status and sexual orientation (section 21). The Act covers, inter alia, discrimination in respect of employment, in terms consistent with *Article 1, paragraph 3, of the Convention*. Sexual harassment and racial harassment and action exciting racial disharmony are also prohibited by the Act (sections 61, 62 and 63). The Committee also notes that the Bill of Rights Act, 1990, was amended by the Human Rights Act, 1993, to include all the grounds of discrimination provided for in the Human Rights Act.

2. The NZCTU states that the fact that a number of the grounds of discrimination proscribed by the Human Rights Act are not contained in the Employment Contracts Act, 1991, is a significant omission from the key legislation regulating the employment relationship. While conceding that complaints based on those omitted grounds might succeed under the "unjustified action" head of the personal grievance procedure provided for in the Employment Contracts Act, the NZCTU asserts that this is not certain. In addition, the NZCTU draws attention to the exclusions and exceptions provided for under the Human Rights Act, stating, among other things, that the Government is not constrained by the prohibition of discrimination on the grounds of disability, age, political opinion, employment status, family status and sexual orientation until 1 January 2000 (sections 151 and 152 of the Act). It also states that the rights which are granted here can be overridden at any time by legislation, as has in fact been done under section 151.

3. The Government, in response to the last of these points, states that, at the time of drafting the Act, it was not clear what impact those new grounds of discrimination would have on the wide range of government activities and policies; accordingly, it was considered appropriate to allow time for adjustment. The Government notes that, for example, family status affects an individual's or a family's entitlement to income support provided through general taxation. The Government also points out that section 3 of the Act binds the Crown to the Act's provisions and that section 5(1) requires the Human Rights Commission to determine and to report in detail to the Minister of Justice by 31 December 1998, whether any of the Acts, regulations, and any policy or administrative practice of the Government conflict with the Act or infringe its spirit or intention. The Government also refers to the Bill of Rights Act, 1990, which applies to acts of the legislative or judicial branches and to acts by any person or body in the performance of any public function, power or duty by or pursuant to law. The Government also indicates that, although the Human Rights Act has not been tested in the area of discrimination in employment and occupation, decisions of the Court of Appeal have upheld individual rights under other aspects of the Act.

4. As concerns this exemption, the Committee recalls that for some years, it has been encouraging the Government to include the ground of "political opinion" as a proscribed ground of discrimination. Although the Human Rights Act 1993 does include the ground of political opinion, sections 151(2) and 152 of that Act have the effect of ensuring that nothing relating to that ground, inter alia, shall affect anything done by or on behalf of the Government until the close of the 31st day of December 1999. The importance of including this ground was pointed out in paragraph 60 of the 1988 *General Survey on Equality in Employment and Occupation*, where the Committee stated that one of the essential traits of this type of discrimination is that it is most likely to be due to measures taken by the State or the public authorities. Given the importance of declaring and pursuing a national policy to eliminate discrimination on the grounds of the Convention, the Committee hopes that the extension of protection to acts done by the State will be accelerated. In the meantime, it requests the Government to indicate what protection and avenues of redress are afforded to persons who consider themselves to have been subject to discrimination in employment on all the exempted grounds through action done by or on behalf of the Government until the year 2000.

5. *Enforcement and promotion*. Referring to the Committee's 1993 comments, the Government provides detailed information about the non-legislative measures designed to promote equal employment opportunities (EEO), including the Joint Equal Employment Opportunities Trust, funded by employer subscriptions and the Government to promote EEO as good management practice, and the Equal Employment Opportunities Contestable Fund, by which the Government supports projects to promote EEO programmes and practices in private sector workplaces. The Government has also referred to a number of agencies or ministries with responsibility for activities in a wide range of areas pertinent to the application of the Convention. Supplementary information on particular initiatives is provided in the comments of the NZEF, including mention of the Federation's joint initiative with the EEO Trust to produce a guide for employers on the Human Rights Act and Equal Employment Opportunity Act and its intention to publish a guide on sexual harassment.

6. As a general point, the NZCTU states that the measures identified by the Government to promote equality of opportunity and treatment are located within an essentially passive labour market and employment policy, which rely on market forces to achieve the appropriate outcomes. While there are legal obligations on various government employers to develop, implement and report on EEO programmes, the NZCTU states that the State Services Commission monitors compliance only within a grouping which now excludes a large number of previously core government agencies. As concerns the measures referred to by the Government to promote equal employment opportunities in the private sector, the NZCTU expresses the view that neither the Trust nor the Fund has been a significant initiative in this respect. The NZCTU also contends that, in the absence of any mandatory equal opportunities obligations on private sector employers, attempts to negotiate such EEO provisions into collective employment contracts have been largely unsuccessful. The NZCTU considers, in this regard, that the Employment Contracts Act, which asserts the primacy of individual negotiation over any collective approach, gives greater freedom for employers to resist obligations considered onerous, such as EEO obligations. The NZCTU states that outcomes in bargaining under the Employment Contracts Act are almost entirely dependent on bargaining power, and those who would benefit most from greater equality of opportunity lack that power. The NZCTU also contends that the legislation's promotion of an individual contract regime undermines the effective use of the entire range of protection against discrimination, including the personal grievance provisions of the Act: it is significantly more difficult

to establish that discrimination has occurred, as information on comparative terms and conditions of employment is almost impossible to obtain and discriminatory decisions are far more easily masked by apparent assessments of performance and merit.

7. Moreover, states the NZCTU, the individualistic and self-promotional environment created by the Act tends to place Maori and Pacific Island people at a fundamental disadvantage, because their cultures tend to disapprove of such concepts in favour of collective approaches and solutions. As to the adequacy of remedies, the NZCTU notes that neither of the two tribunals created by the Act can do more than order monetary remedies or reinstatement. They are not able to order the employer to take positive steps to promote equality of opportunity within the enterprise.

8. In relation to the initiatives of the Education and Training Support Agency (ETSA), the NZCTU states that virtually none of the training programmes identified are targeted specifically at improving equality of opportunity for members of groups presently disadvantaged by discriminatory attitudes. According to the NZCTU, most of those programmes can be of only limited application to such ends because they tend to assume that the causes of the individual's inability to secure employment are located within that individual (for example, a lack of skills, experience, training, qualifications, motivation or confidence). The NZCTU also considers that the effectiveness of a number of other agencies, referred to by the Government, is undermined by inadequate funding and by being confined to essentially advisory roles, including the Te Puni Kokiri (Ministry of Maori Development), and the Ministries of Pacific Island Affairs, Women's Affairs, Youth Affairs and the Senior Citizens Unit of the Department of Social Welfare. Moreover, the NZCTU states that while the Government has identified a number of groups as appropriate equal opportunity targets, none of the relevant agencies has responsibility for comprehensive action programmes to overcome the inequalities. This, states the NZCTU, reflects the Government's essentially passive labour market policy which, in this context, relies substantially on "market forces" to deliver the necessary equity. The NZCTU does not believe that such an approach can deliver the outcome required by this Convention.

9. In its response, the Government states that it does not accept the NZCTU's view that agencies such as the Ministry of Pacific Island Affairs and Te Puni Kokiri are under-funded. Moreover, it does not accept the claim that there is a lack of resources in the enforcement of anti-discrimination legislation. Extensive information has been provided by the Government concerning its labour market policies and programmes. On this matter, the Committee requests the Government to indicate whether any of these measures are aimed at, or are linked with, initiatives to promote equality of opportunity and treatment in employment.

10. In many respects, the Committee is unable to assess whether or not the measures taken to given effect to the Convention are adequate or effective. The Committee notes that, as at 30 June 1992, 31 of the 36 government departments had provided the State Services Commission with an annual report of progress in implementing the previous year's EEO plan. The Committee also notes the information provided by the Government on the activities being undertaken to develop career opportunities for women, Maori and Pacific Island staff and data for the year 1991-92 indicating the comparative representation and salary distribution of women, Maori, Pacific Island, other ethnic groups and people with disabilities in the public service, which shows a slight increase in the employment of people with disabilities and a slight decrease in the employment of Maori, Pacific Island and other ethnic minorities. Women comprise 53 per cent of employees in the public service, although they are generally over-represented in the lower salary band. However, all of the identified groups have

decreased their representation in the lower salary band. The Committee requests the Government to continue to provide information on the positive measures being taken to implement EEO in the public sector and the results of those efforts. It would also be glad if the Government would comment in particular on the NZCTU's assertion that the measures in place are not well adapted to the cultures of Maori and other ethnic minority groups.

11. The Committee is encouraged by the Government's information concerning the increase of staffing levels within both the Complaints Division of the Human Rights Commission and the EEO Team of the State Services Commission, increased by 25 per cent and 43 per cent respectively in the last 12 months. The Committee also notes with interest that, as a result of the increase in resources for the labour inspectorate over the last 12 months, there has been some reduction in the waiting times for the inspectorate to investigate complaints, a matter about which the NZCTU expressed concern. The Committee hopes that the Government will continue to provide such information in its future reports. It also requests the Government to indicate the total number of complaints concerning discrimination received annually by the labour inspectorate.

12. As a number of the comments of the NZCTU, to which the Government has responded, concern the implementation of equal pay, these will be addressed by the Committee in the context of its next examination of the application of Convention No. 100.

13. As a general comment, the Committee notes that, while the Government's report indicates an extensive range of initiatives, little reference has been made to activities involving trade unions in the implementation of the Convention. Moreover, the NZCTU's comments reflect dissatisfaction with the progress being made. The Committee hopes that the Government will inform it of any steps taken in relation to this situation.

14. A number of other matters are being taken up in the request addressed directly to the Government on this Convention.

Norway (ratification: 1959)

1. The Committee notes the Government's report. The information supplied by the Government in reply to previous comments regarding reported differences in male and female wages and the gender-divided labour market will be pursued in the context of the report due on Convention No. 100.

2. The Committee notes with concern that no measures have been taken to comply with the 1983 report of the Committee set up under article 24 of the ILO Constitution to examine Norway's application of *Article 1, paragraph 2, of the Convention*, recommending that the Government remove any inconsistency between section 55A of the Worker Protection and Working Environment Act, No. 4/1977 and this Article. The 1983 report concluded — and the present Committee has endorsed this conclusion — that section 55A is drafted in such a way that it allows employers to question job applicants about their political, religious or cultural views even where such views are not relevant to the inherent requirements for the performance of certain jobs. The Committee had noted the Government's explanation that the parliamentary committee set up to examine the relationship of the two provisions decided in 1992 that there was no contradiction between section 55A and the Convention, and that, if it should appear that section 55A conflicts with the provisions of the Convention, the question of revising the section would be considered again. As the current report is silent on follow-up in this matter, the Committee draws the Government's attention to paragraph 127 of its 1988 *General*

Survey on Equality in Employment and Occupation, which states that Article 1, paragraph 2, of the Convention should be interpreted in such a manner that criteria such as political opinion, national extraction and religion may be taken into account in connection with the inherent requirements of certain posts involving special responsibilities, but that if carried beyond certain limits, this practice comes into conflict with the provisions of the Convention.

3. Since it is the obligation of member States of the ILO under article 19(5)(d) of the Constitution to "take such action as may be necessary to make effective the provisions" of a ratified Convention, the Committee once again urges the Government to keep section 55A under review in the light of the 1983 recommendation in order to ensure that it be worded, interpreted and applied in a manner which does not conflict with the Convention. In particular, it requests the Government to provide information in future reports on any developments, such as court challenges to section 55A, concerning its interpretation and application to jobs where criteria such as political, religious or cultural views are not inherent requirements of the job.

4. The Committee is addressing a request directly to the Government on certain other points.

Pakistan (ratification: 1961)

The Committee notes the Government's report for the period ending 30 June 1993.

1. With reference to its previous observation, the Committee recalls that two Pakistani trade union organizations, the Pakistan National Federation of Trade Unions (PNFTU) and the All-Pakistan Federation of Trade Unions (APFTU), transmitted comments on the application of the Convention, particularly as regards religious minorities and women workers, on which the Committee was expecting the Government's observations, but to which the Government did not refer specifically in its report. The Committee notes another communication transmitted by the APFTU in October 1994 recalling that the Government was to take economic and social action for women in rural areas with a view to providing them with adequate education and vocational training. The Committee requests the Government to supply its own information in this respect, particularly on the practical measures that it intends to take.

The Committee recalls that the comments of the trade union organizations emphasized the need for the Government to take measures to give practical effect to the Convention, and particularly to eliminate discrimination on the basis of religion, promote equality of opportunity especially for women workers, and increase the awareness of all categories of society in this respect. They suggested that social measures should be adopted to improve the situation. The Committee would be grateful if the Government would indicate in its next report the action that it proposes to take in this respect.

2. With regard to the exclusion from the application of labour legislation of the Special Industrial Zones (SIZs) newly established to attract foreign investors, the Committee notes that, according to the Government, the matter is being examined by a tripartite task force. The Committee also refers to the situation in export processing zones (EPZs), which are not covered by labour legislation but where non-compulsory minimum social legislation applies which does not include guarantees against discrimination. This situation was one of a number examined during the ILO direct contacts mission in January 1994 on the application of Conventions Nos. 87 and 98. The Committee trusts that the principle set out in this Convention will be respected in these zones. The Committee also notes that the Human Rights Commission of Pakistan recommended in its January 1994 report that the practice of permanent exclusion of

certain workers from coverage by labour legislation due to their employment in special zones be brought to an end. Although noting the Government's arguments that the wages in these zones are higher and that foreign investors are attracted by fiscal incentives, the Committee emphasizes that the exclusion of workers in these zones from the scope of labour legislation affects the principle set out in the Convention, since it also excludes them from the protection set out in labour legislation against any discriminatory practices. The Committee requests the Government to state the manner in which it intends to ensure the application of the Convention in these zones, particularly in view of the discussions of the above-mentioned tripartite task force.

3. For a number of years, the Committee has been commenting on the provisions of the Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 (No. XX), which have been discussed by the Conference Committee on several occasions. The Committee recalls that the provisions of this Ordinance (and particularly section 3(2)) provide for sentences of imprisonment for up to three years for these religious groups for, inter alia, propagating their faith. As the Committee has already indicated, this type of sentence could have a direct effect on their employment opportunities, which is contrary to *Article 1, paragraph 1, of the Convention*.

In particular, the Committee requested the Government to reconsider the Ordinance and any administrative measures relating to employment which affect the members of religious groups. During the discussion of this case in the Conference Committee in June 1993, the Committee urged the Government to take the necessary measures to guarantee that there is no discrimination in respect of employment, in law or in practice, on the ground of religion.

The Committee notes that the Government once again refers to the Constitution (article 27 of which prohibits discrimination in employment in the national public services, article 36 of which provides that the State shall safeguard the legitimate rights and interests of minorities, as well as their proper representation in federal and provincial government services, and article 20, which guarantees religious freedom). It also reiterates its statement that the Anti-Islamic Activities (Prohibition and Punishment) Ordinance does not affect the employment and education of members of the Ahmadi and Quadiani communities, since discrimination against minorities on the ground of religion or faith is not permitted.

The Committee also notes the Supreme Court ruling of July 1993 declaring that the above Ordinance is in accordance with the provisions of the national Constitution of 1973, a ruling which the Human Rights Commission of Pakistan asks to be reviewed.

In the absence of any measure to bring the legislation into conformity with the Convention and of any progress along the lines of the comments that it has been making for years on the practices covered by this Ordinance, the Committee is bound to urge the Government once again to re-examine this situation in the light of its comments. It recalls that the Office can provide technical assistance to help resolve this difficulty. It requests the Government to supply information on this subject in its next report.

4. In its previous comments, the Committee referred to allegations of dismissal or discriminatory termination of the employment of members of the Ahmadi and Quadiani communities serving in the public service and the armed forces. It noted the explanations provided by the Government and requested statistics on the number and percentage of Ahmadis serving in the administration and the armed forces, as well as on cases of dismissal (and the grounds). The Committee notes the Government's statement that it is unable to provide such statistics, since they are not available, and that it considers them not to be relevant. The Committee repeats its request and recalls the value that it places

on being provided with information on decisions relating to the application of the Convention and on relevant reports, studies, surveys, etc. in accordance with points IV and V of the report form for this Convention.

5. Further to its comments on the question that the issue of passports to Muslims is subject to a declaration in writing that the founder of the Ahmadi movement was a liar and an imposter, the Committee notes the Government's expression of willingness to receive technical assistance from the Office on this subject. The Committee notes the explanations provided by the Government and recalls its previous comments concerning the consequences of the procedure for the issue of passports, which obliges Muslims to affirm their faith and affects the right of persons who refuse to do so to seek employment abroad on an equal footing with other nationals. In view of the fact that there is no reference in its report to the Government's wish that the Office provide technical assistance in this respect, the Committee urges the Government to re-examine the situation in the light of its comments and to supply detailed information on this in its next report.

6. The Committee is addressing a request directly to the Government on other points.

[The Government is asked to supply full particulars to the Conference at its 82nd Session.]

Philippines (ratification: 1960)

1. The Committee notes with satisfaction that the Government is making extensive efforts to eliminate discrimination and to promote equality of opportunity and treatment in employment for women, through policies and programmes that seek to deal comprehensively with the sources of inequality. In its previous comment, the Committee had noted with interest the provisions of the Women in Development and Nation Building Act (Republic Act No. 7192 of 1992), which among other things, requires all government departments and agencies to review and revise all their regulations, circulars and procedures with the aim of removing gender bias. The Act also gives the National Economic and Development Authority (NEDA) the mandate to ensure that government departments and agencies see to the participation of women and the integration of gender concerns in development programmes. The Committee notes that the NEDA, in consultation with the National Commission on the Role of Filipino Women, coordinated the drafting and finalization of the rules and regulations to implement the above-mentioned Act and distributed and explained to government agencies and other relevant bodies the obligations entailed, including the duty to submit a compliance report to Congress every six months. The Committee thanks the Government for supplying the first two compliance reports on this Act and requests it to continue to furnish information on the practical impact of the various measures being taken to ensure gender equity, including copies of further compliance reports.

2. The Committee is also addressing a request directly to the Government on other points.

Poland (ratification: 1961)

The Committee notes the Government's report and the appended documents.

1. Further to its previous comments concerning the draft amendment of the Labour Code, the Committee notes that, according to the Government, this reform is a long term one since the national labour legislation has to be adjusted to a market economy and international obligations concerning the regulation of industrial relations. According to

the report, the reform prohibits all discrimination in industrial relations based on sex, age, race, nationality, religious and political opinion, and trade union membership. The Committee notes that the draft amendment has been before Parliament since May 1994 and asks the Government to provide a copy of the text as soon as it has been adopted.

2. With regard to the draft Constitutional Acts submitted to the Constitutional Commission, the Committee notes that they have been discussed in the framework of the said Commission. The Committee asks the Government to keep it informed of any developments in this respect.

3. The Committee takes note of the report of the activities undertaken in 1992 by the Commissioner for Civil Rights. It notes in particular that the cases submitted to the Commissioner refer to discrimination based on sex in employment and occupation, at the time of recruitment and during employment. The Committee also notes two communications addressed by the Commissioner to the Minister of Labour in 1993 reporting discrimination against women in employment, particularly massive layoffs by enterprises undergoing restructuring, which first and foremost affect working mothers (who accounted, in September 1993, for 53 per cent of the unemployed), and discrimination by employment agencies based on age and sex particularly with regard to posts in the public administration. The Commissioner suggests that an anti-discrimination clause should be included in the Labour Code and that two days' parental leave per year should be granted to male workers to put them on an equal footing with women workers who already have this entitlement. The Committee notes that in its replies, the Government recalls the fundamental principle of a free labour market, but considers it necessary for the draft amendments to the Labour Code to be adopted since they would enable equality in employment to be promoted in many respects. It also indicates that job offers must be drafted in accordance with section 11(2) of the Employment and Unemployment Act of 16 October 1991 which ensures equal treatment for jobseekers by employment agencies. The Government states that this provision will be examined in the forthcoming legislative reform but that, given the present state of the labour market, more protective regulations would not necessarily guarantee the application of these principles in practice.

With regard to termination of employment, the Committee notes with interest that, in its report, the Government recalls that under section 177(1) of the Labour Code it is not permissible to terminate a woman worker's contract of employment without notice while she is pregnant or on maternity leave, irrespective of the grounds for such termination. The only exception is where termination is necessary due to the liquidation or bankruptcy of the enterprise. In such cases the enterprise must reach agreement with the trade union on the termination procedure. With regard to child-care leave, the Committee notes that the Government refers to section 41 of the Labour Code under which contracts of employment may not be terminated while a worker is on leave, including child-care leave, except in the event of liquidation or bankruptcy, or for other reasons in the event of massive layoffs or individual terminations, if the trade union does not oppose such termination. The Committee would be grateful if the Government would provide a copy of the report of labour inspections concerning the situation created by the restructuring of the Polish economy.

Since the revision of the Labour Code is still pending, the Committee draws the Government's attention to the importance of ensuring by law the principles of non-discrimination contained in the Convention. It also recalls that under *Article 2 of the Convention* the Government must declare and pursue a national policy to promote equality with a view to eliminating all discrimination based on sex, race, colour, religion, political opinion, national extraction or social origin. The Committee urges the

Government in its next report to provide detailed information on the measures taken or envisaged in this respect (other than section 11 of the Act of 16 October 1991 on equal treatment in job placement) particularly for women's access to employment and vocational training and guidance, at the time of recruitment and during the employment relationship.

4. In its previous comments, the Committee asked the Government to provide copies of the decisions of the High Administrative Court which concerned direct or indirect discrimination in employment. The Committee has learned of the decisions handed down in 1990 and 1991 in favour of people who had taken legal action for discriminatory dismissal in the public sector. The Committee notes, in the arguments of the High Court in judgement No. 759/90 of 20 November 1990, that the supplementary provision enabling a public employee to be dismissed on "other significant grounds" (section 1(1) of the special regulations of 13 July 1990 concerning government employees, which were in force from 1 August 1990 to 31 January 1991), must be interpreted in accordance with the national Constitution and, more particularly, with the civil rights and freedoms which, in the view of the High Court, must be strengthened and developed. It should be noted that the administrative authorities' interpretation of this provision was deemed by the High Court to be arbitrary and *ultra vires*.

The Committee recalls that under *Article 3(d)* of the Convention, the Government must pursue the national policy to promote equality, referred to in Article 2, in respect of "employment under the direct control of a national authority". The Committee would therefore be grateful if the Government would state in its next report how it applies this policy in respect of employment under its control, particularly in the light of the judgements of the High Administrative Court.

5. With regard to the vacant post of Government Plenipotentiary for Women and Family Affairs, and the functions attributed to its Office, the Committee notes from the report that no decision has been taken on this matter and that the Office's main attributions concerned international cooperation with regard to the family, young people and women. The Committee asks the Government to keep it informed of developments in this situation which is of major importance, particularly as, according to the statements made by the National Commission of NSZZ Solidarnosc which the Committee commented on previously, female workers especially those with family responsibilities or who take child-care leave, have become a group which is vulnerable to dismissals (see point 3 above).

6. The Committee is addressing a request directly to the Government on a number of other points.

Romania (ratification: 1973)

1. The Committee notes the Government's reports, the attached documentation and the information provided by the Government, in reply to the comments of the Committee of Experts, to the Conference Committee in 1994, as well as the ensuing discussion.

2. The Committee recalls that the Commission of Inquiry appointed in 1991 under article 26 of the ILO Constitution to examine the observance by Romania of Convention No. 111 recommended that the Government adopt a number of measures which could help it to conform fully to the Convention. It requested the Government to adopt the measures recommended as soon as possible and to supply detailed information on all developments in its annual reports on the application of the Convention.

3. *Discrimination on the grounds of national extraction, race and social origin.* Further to its previous comments, the Committee notes that a Bill on National

Minorities, designed to respect and protect national minorities and guarantee them equality of rights and basic freedoms, was submitted to Parliament at the beginning of 1994. The Committee notes that this text should repeal Act No. 86 of 7 February 1945 on the Nationalities Statute and guarantee the application of the principles of equality of rights and basic freedoms to citizens of these minorities, including the use of their mother tongue and the right to learn and receive teaching in that language. The Committee requests the Government to inform it of any development in this respect and to provide a copy of the text when it is adopted.

4. With regard to the composition of the Council for National Minorities, established in April 1993, the Committee notes that, by virtue of section 2 of Decision No. 137 of the Romanian Government, dated 6 April 1993, the Council includes representatives of the Democratic Magyar Union of Romania, the Democratic Forum of Germans of Romania and the Democratic Union of the Roma, as well as the representatives of nine other organizations of minorities (out of the 20 or so minorities existing in the country). The Committee would be grateful if the Government would continue to supply information regularly on any changes in the composition of this. Furthermore, the Committee notes the Government's statement that a budget of over 1.1 thousand million lei was allocated to the Council for its activities in 1994. The Committee notes from the Government's report that the IInd Romano-Hungarian Civic Forum was held with the participation of the President of the country. It would be grateful if the Government would provide detailed information on the Council's programme of activities for 1994 and the planned activities for 1995, and if it would transmit any report produced by the Council on its activities.

5. The Committee also notes that the Council held a meeting in September 1994 with the representatives of Rom organizations to discuss matters relating to education and equality of social and occupational opportunities for this minority. The Committee recalls that the Commission of Inquiry had noted that widespread discrimination was practised, particularly against the Roma, and that their situation required particular attention, especially as regards the education of children and vocational training. It recommended in particular that their social situation should be improved by means of an integrated programme (Recommendation No. 14) drawn up in collaboration with their representatives. The Committee notes with interest that a draft programme for the social promotion and measures to resolve the employment problems of the Rom population has been prepared and submitted to the competent government authorities, and that a draft Government Decision establishes a national inspection office for the social integration and promotion of the Rom population. The Committee therefore requests the Government to keep it informed of the practical results of the discussions held with Rom representatives, and particularly of the adoption of the draft Government Decision and a social programme concerning them.

6. The Committee notes in this respect that a report covering the period 1989-93 by the Romanian Institute of Research on the Quality of Life, in association with the International Child Development Centre (Florence, Italy), emphasizes in a special chapter devoted to the Roma that their illiteracy rate is around 27 per cent, their unemployment rate is 52 per cent and that 74 per cent of them have no vocational skills. The report emphasizes the poverty and social marginalization of the Roma, who are often confronted with negative attitudes.

7. The Committee draws the Government's attention to the importance of the Commission of Inquiry's Recommendation No. 13, in which it calls for the undertaking of a vast campaign, in collaboration with the social partners and other appropriate bodies, with a view to eradicating the traditionally negative attitude towards the Roma.

Although understanding the complexity of the situation as regards the Roma, the Committee notes that Romania has established an institutional framework making it possible to find solutions to these problems and to implement them progressively. The Committee requests the Government to provide detailed information on any campaign designed to develop a climate of tolerance and on any decisions or measures which have been taken, or are envisaged, to improve the situation of the Roma, in full consultation with the persons concerned. In particular, it requests the Government to supply detailed information in its next report on the positive measures taken in practice to facilitate and encourage their access to education, vocational training and employment. It would also be grateful to receive information and statistics on the effect given in practice to Decision No. 461 of 1991 as regards the Roma, and particularly under Chapter IX respecting teaching in minority languages, including the measures adopted to provide them with teaching in their mother tongue (section 41) and to enable them to learn Romanian (section 43).

8. In view of the linguistic diversity of the country and the existence of many national minorities, the Committee also requests the Government to indicate in its next report the manner in which it ensures that there is no discrimination based on the language of applicants for jobs for which the language spoken is not an inherent requirement. In particular, the Committee would be grateful if the Government would supply information on the draft Act on Education adopted in June 1994 by the Chamber of Deputies and transmitted to the Senate which concerns the teaching of mother tongues, as well as the alternative draft Act on the Education of Minorities, submitted in September 1994 to the Senate at the petition of almost 500,000 citizens, which aims at amending the draft Act on Education.

9. The Committee recalls that the Government expressed the intention of organizing two working groups including Rom labour inspectors to evaluate the results of their work and analyse the possibility of the creation of small private enterprises by the Rom minority. In the absence of a reply by the Government on this point, the Committee once again requests the Government to report the outcome of these meetings and the creation of any enterprises.

10. The Committee also requests the Government to provide information on any developments in the situation of the Magyar minority, which represents over 8 per cent of the Romanian population, in the fields covered by the Convention, and on how it ensures the effective application of Convention with regard to the Magyar minority.

11. *Measures of redress.* The Committee recalls that the Commission of Inquiry found that individuals had been the victims of discriminatory practices in employment and occupation on the basis of political opinion, social origin and national extraction. It called upon the Government to ensure that these individuals obtained compensation and, where possible, reinstatement in their jobs. In particular, the Committee requested the Government to keep it informed of the measures taken to give effect to the following recommendations of the Commission of Inquiry: No. 4 (putting an end to the effect of discriminatory measures adopted in the past and restoring equal opportunity and treatment for the persons concerned); No. 6 (government guarantees of an efficient and impartial follow-up to the requests for medical examinations made by the persons who went on strike on 15 November 1987, who have been rehabilitated by the courts); and No. 7 (reinstatement of workers who lost their jobs as a result of being arrested following the June 1990 demonstrations).

12. The Committee also notes two government reports referring to judicial decisions under Act No. 118/1990 and Act No. 18/1991 which relate to a total of around 700 cases, as well as the information provided to the Conference Committee on 12 cases. In

most of these cases, the courts have accepted claims for compensation and only 26 cases were dismissed on the grounds that the requirements set by the law had not been fulfilled. The Committee would be grateful if the Government would provide further information on the cases that were dismissed. The Committee notes that the Government will provide information on the other judicial decisions as they are handed down, in accordance with Recommendation No. 20 (informing the supervisory bodies of the results achieved as regards reparations for the discrimination suffered). It requests the Government also to indicate the measures taken to give effect to Recommendation No. 18 (rebuilding of the houses destroyed by the systemization policy). It requests the Government to indicate in its next report the measures taken regarding the persons mentioned by name in Recommendation No. 4 (see the paragraph above) and their results. With regard to the persons who went on strike in Brasov, the Committee notes that, according to the Government, they have been examined medically and provided with government allowances. It requests the Government to state where these medical examinations took place, and to transmit a list of the persons who have benefited from them.

13. On the subject of the workers whose employment was terminated as a result of their detention for more than two months without proof following the 1990 demonstrations, the Committee notes that, according to the Government, the Labour Code permits the employment of workers to be terminated if they have purged a prison sentence of over 60 days. The Committee draws the Government's attention to Recommendation No. 7 of the Commission of Inquiry which calls for the reinstatement of those persons who lost their jobs on political grounds. It requests the Government to provide detailed information on the current situation of these persons and to take measures, if necessary, to ensure that they are reinstated. It hopes that the Government will be in a position to provide the fullest possible information in this respect in its next report.

14. With regard to the restitution of ownership title to property, the Committee notes with interest that the time-limit for the submission of applications to obtain compensation under Act No. 118/1990 has been extended to 31 December 1995 and that such applications are examined by the central commission or departmental commissions established under this Act. It notes that, according to the Government, persons who have provided proof of their property rights have had their land returned to them and that the slowest cases to be settled are those which have to be resolved in the courts.

15. In its previous comments, the Committee noted that, in accordance with the request made by the Governing Body of the ILO, the conclusions and recommendations contained in the report of the Commission of Inquiry had been translated into Romanian. It notes that in 1993 the Government disseminated the report to national organizations of workers and employers and that in 1994 it was disseminated to the general judiciary and the Ministries of Justice and Education. It also noted the Government's intention to disseminate the report to employment offices and local and central institutions. The Committee is of the opinion that the widespread dissemination in Romanian of the conclusions and recommendations of the report is bound to be of value in establishing a national dialogue between the various groups of the population and in the formulation of a real national policy of equality of opportunity and treatment. It requests the Government to keep it informed of the dissemination of the report of the Commission of Inquiry.

16. *The situation of women workers*. The Committee notes the detailed information provided by the Government on the situation of women who work and, in particular, the brief summary of a national report on the situation of women in Romania from 1980 to

1994. The Committee notes that progress was made up to 1989 in the employment of women, with a high rate of participation of women in the labour market, their penetration in sectors which traditionally employed men and their presence in many jobs on an equal footing with men, particularly in positions of responsibility. However, the report points out that the Romanian revolution of 1989 and the resulting transition to a market economy gave rise to far-reaching change in all fields, which had a negative effect on women. Situations of discrimination have arisen, such as the higher unemployment rate of women than men, the lower average wages earned by women in contrast to their near equality in educational terms, the greater proportion of women affected by poverty and their lesser influence on economic decisions, which is out of proportion to their participation rate. By way of conclusion to the report, which emphasizes the problems of inequality between the sexes, a number of recommendations are made "to relaunch the process of equalization between women and men under the specific conditions of a market economy". The Committee requests the Government to indicate the measures it considers taking in this regard.

17. The Committee notes the Government's statement that a national committee has been established to prepare for the participation of the country in the UN Fourth World Conference on Women, to be held in Beijing in 1995. One of the major objectives of the committee is to set up a government structure responsible for preparing training programmes and special promotional measures for women. The Committee welcomes the establishment of this structure and calls on the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment for women, in accordance with *Article 2 of the Convention*, in all the fields enumerated in Paragraph 2 of Recommendation No. 111. It also recalls that, by virtue of *Article 5*, special measures of protection or assistance designed to redress situations of inequality are not considered to be discriminatory. The Committee would be grateful if the Government would keep it informed in its next report of developments in the situation in this field, particularly as regards access to vocational training, access to employment and the various occupations; terms and conditions of employment; and retention in employment.

18. *Discrimination based on political opinion.* With reference to its previous comments, in which the Committee indicated its concern that manifestations of differing political opinions may still give rise to discriminatory practices in employment, the Committee once again requests the Government to indicate in its next report any measures that have been taken to ensure that discrimination on the ground of political opinion cannot occur.

19. The Committee is addressing a request directly to the Government on other points.

Russian Federation (ratification: 1961)

The Committee notes the information contained in the Government's report in reply to its previous comments, including the detailed statistical information.

1. The Committee notes that the new Constitution, adopted on 12 December 1993, in article 19, guarantees equality of rights and liberties irrespective of sex, race, nationality, language, origin, property or employment, residence, attitude to religion, convictions, membership of public associations or any other circumstance. The Committee also notes the Government's statement that the term "political opinion", one of the prohibited grounds of discrimination listed in *Article 1, paragraph 1(a), of the Convention*, is covered by the terms "convictions" and "membership of public associations" found in the Constitution. The Committee would ask the Government to

clarify that "convictions" covers this ground since "membership of public associations" might not ensure sufficient protection, by not covering persons who, although they may not belong to a certain public association, nevertheless hold and/or express political opinions. Appropriate additions to the new draft Labour Code would make it clear that all the grounds of the Convention are covered.

2. The Committee would appreciate receiving information on progress in the adoption of the new draft Labour Code, on which the Office's technical assistance was provided in 1993.

3. The Committee recalls that in its previous observation it noted that section 5 of the Act on Employment, amended in July 1992, provides that the national policy on employment shall ensure equality of opportunity and treatment in employment to all citizens irrespective of nationality, sex, age, social status, political convictions and religious attitudes. The Committee notes that the new draft Labour Code mentioned above is worded in a similar manner. Recalling that Article 1, paragraph 1(a), of the Convention also prohibits discrimination on the basis of race and colour, the Committee repeats its request to the Government to provide information on the measures taken to ensure the promotion of equal opportunity and treatment in employment for persons belonging to different racial groups.

4. The Committee is raising other points in a request addressed directly to the Government.

Rwanda (ratification: 1981)

The Committee notes that the Government's report has not been received. It refers to its General Observation on this country and repeats its previous observation which read as follows:

> 1. In its previous comments, the Committee had noted that certificates of good conduct, living and morals are required by the labour administration before any person begins to work for wages and that when the communal authority considers that the person concerned may be suspected of carrying on an activity prejudicial to the security of the State, it refuses to issue these certificates without having to base its refusal on any provisions or procedures in this respect.
>
> The Committee notes that, according to the Government, the question has been submitted to the Ministry of the Interior and of Communal Development for examination and appropriate follow-up. It hopes that the next report will indicate the measures taken or envisaged as a result of this examination so as to ensure that a person may be refused employment only for reasons linked to the security of the State within the limits prescribed by *Articles 1, paragraph 2, and 4 of the Convention*, and subject to the right of appeal set out in *Article 4*. In this regard, the Committee recalls paragraphs 134 to 138 and 104 of its 1988 *General Survey on Equality in Employment and Occupation*, in particular, where it states: "the application of measures intended to protect the security of the State must be examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned. Otherwise, there is a danger, and even likelihood, that such measures entail distinctions and exclusions based on political opinion or religion, which would be contrary to the Convention."
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> 2. In its previous direct requests, the Committee had also referred to section 5 of the Legislative Decree of 19 March 1974 respecting General Regulations for State Employees and section 6 of Presidential Order No. 227/01 of 20 December 1976 respecting Regulations for Personnel of Public Enterprises, which include among recruitment criteria "good conduct, living and morals" and "loyalty to the authorities and national institutions".
>
> Noting the Government's reply that this proof of loyalty is treated in the same way as certificates of good conduct, living and morals, the issuance of which is at the discretion of

the communal authority, the Committee refers back to its comments under point I of this observation. In addition, it observes that the requirement of "loyalty to the authorities and national institutions" should not be interpreted in practice in such a way as to justify any distinction, exclusion or preference based on political opinion as regards access to employment in the public service or in public enterprises. Indeed, while it is accepted under Article 1, paragraph 2, of the Convention that political opinion may be taken into account for certain senior posts directly related to the implementation of government policy, this is not the case when criteria of a political nature are laid down for all types of public employment in general or in certain other occupations, as for example, when it is stipulated that the persons concerned must formally declare themselves and show themselves faithful to the political principles of the regime in power.

Consequently, the Committee trusts that the Government will supply in its next report information on the application in practice of the provisions referred to above and, in particular, on the number of cases and the type of employment where these provisions have been used.

3. The Committee requests the Government to refer also to the request it is addressing directly to the Government on the application of other aspects of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Saudi Arabia (ratification: 1978)

1. The Committee notes the Government's report in reply to its previous observation.

2. The Committee recalls that the International Confederation of Arab Trade Unions (ICATU) had communicated observations in March 1993, transmitting comments on the observance of the Convention, as outlined in the Committee's previous observation. The Committee notes that the Government again questions the source of the information transmitted by ICATU. The Committee notes that the Government has not given a direct reply in the context of the ICATU communication. However, the same issues are dealt with more generally in the Government's report and in the Committee's previous examination of the Convention's application.

3. The Committee recalls its continuing dialogue with the Government, in relation to this and other Conventions, based on the Government's position that the application of Islamic law, known as Shari'a, is sufficient to guarantee the observance of the Convention. The Government has acknowledged, in its most recent report, that this position may cause some confusion, as different Islamic countries apply the Shari'a in different ways on secondary issues, though they do not differ as to what are the legitimately established pillars and foundations of Islam.

4. The Committee has noted with interest the detailed explanations provided by the Government. Two specific issues have been the focus of discussion. The first is section 160 of the Labour Code, under which "in no case may men and women co-mingle in the place of employment or in the accessory facilities or other appurtenances thereto". The second question, closely related to the first, concerns access of women to vocational training for occupations which are not traditionally "feminine".

5. The Government emphasizes in its report that Shari'a cannot be changed or replaced, and that it is above statutory law. It has asked the Committee to refrain from dealing with matters of a political or religious nature.

6. The Committee stresses that the Convention, while providing that the obligation to promote equality of opportunity and treatment in employment and occupation must be carried out "by methods appropriate to national conditions and practice", requires that

each Member for which it is in force declare and pursue a national policy to eliminate any discrimination in this respect based on race, colour, sex, religion, political opinion, national extraction or social origin *(Article 2 of the Convention)*. It is in this context, and in accordance with its mandate and mission (as revised by the 103rd Session of the Governing Body (1947) and restated in the Committee's 1987 General Report), that the Committee noted in its previous observation that the prohibition of men and women being together at the workplace results in practice in occupational segregation according to sex since it restricts women to jobs where they will be in contact only with other women, and which are deemed to be suitable to their nature and not contrary to current traditions.

7. The Committee requests the Government again to take the necessary measures to give full effect to the Convention.

8. The Committee is addressing a request directly to the Government on a certain number of other points.

Sweden (ratification: 1962)

The Committee notes that the Government's report has not been received. It notes, however, with interest that the Act against Ethnic Discrimination (referred to in its previous observation), prohibiting discrimination against job applicants and workers on the basis of race, colour, national or ethnic origin or confession has been adopted and entered into force on 1 July 1994.

The Committee repeats the remaining points in its previous observation which read as follows:

> 1. The Committee notes the information supplied by the Government on the Equal Opportunities Act, No. 443, which entered into force on 1 January 1992 and repealed the 1979 legislation of this subject, as well as the consequent amendments to the Ordinances containing the instructions for the Equal Opportunities Ombudsman and the Equal Opportunities Commission. Noting that, to date, no collective agreements have been negotiated under the new Act, nor court cases decided in application of its provisions, the Committee requests the Government to supply, in its next report, information on its application in practice, in particular concerning the enforcement activities of the Equal Opportunities Ombudsman and the Equal Opportunities Commission and on any annual plans for the promotion of equal opportunities between men and women at work. It would also appreciate receiving copies of any collective agreements containing provisions on the elimination of sex discrimination in employment negotiated in accordance with the new Act.
>
> 2. *Article 4 of the Convention*. The Committee notes that, according to the Government, the report and proposals of the Parliamentary Committee (SAPO-Kommittén) on the screening of personnel — copies of which have been requested since 1992 following expressions of concern from the Swedish ILO Committee over their content — are still under consideration in the relevant Ministry, now the Ministry of Justice. The Committee asks the Government to supply information on the outcome of this consideration.
>
> 3. The Committee is addressing a direct request to the Government on certain other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Togo (ratification: 1983)

1. With reference to its previous comments on the insertion in the national legislation of "race" among the prohibited grounds of discrimination, the Committee notes with satisfaction that the 1980 Constitution (which did not mention "race") has

been amended and replaced by the Constitution adopted by referendum on 27 September 1992 and promulgated on 14 October 1992, which ensures, in articles 2 and 11, equality before the law of all citizens and all human beings without any distinction in particular as regards extraction, race, sex, religion and political opinion, in accordance with *Article 1, paragraph 1(a), of the Convention.*

2. The Committee is addressing a request directly to the Government in which it raises other points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Azerbaijan, Bangladesh, Belarus, Bolivia, Brazil, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Costa Rica, Cyprus, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gabon, Ghana, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Israel, Italy, Jamaica, Jordan, Kuwait, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Malta, Mauritania, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Senegal, Somalia, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Uruguay, Venezuela, Yemen.*

Information supplied by *Belgium, Benin, Côte d'Ivoire, Cuba, Mexico, Tunisia, Zambia* in answer to a direct request has been noted by the Committee.

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (ratification: 1960)

Article 2, paragraph 1, of the Convention. Further to its previous comments regarding the absence of measures imposing minimum age of 15 years for employment in fishing vessels, the Committee notes the Government's statement in its most recent report that it now considers that Liberian Maritime Law and its sections 51(1) and 326(1) apply to fishing vessels, contrary to the position it had expressed since 1973 and the promises it had made to take measures to correct the situation. The Committee would be grateful if the Government would provide indications on the measures taken to apply the application of the provisions of the Maritime Law to fishing vessels.

[The Government is asked to report in detail in 1996.]

Convention No. 113: Medical Examination (Fishermen), 1959

Liberia (ratification: 1960)

Articles 2, 3, 4 and 5 of the Convention. The Committee notes the Government's reply to the comments it had been making for many years on the need for legislation to give effect to Article 2 (requirement of a physical fitness certificate for employment on a fishing vessel), Article 3 (nature of the medical examination), Article 4 (period of validity of certificates) and Article 5 (possibility of a further medical examination). The Government indicates that it is the Liberian Requirements for Merchant Marine Personnel (RLM-118) which gives effect to the Convention. It further states that Liberian Maritime Regulation 10.325(2) gives effect to the other provisions of the Convention.

The Committee refers to its comments under Convention No. 112 regarding the applicability of the Liberian Maritime Laws and Regulations to fishing vessels. It hopes the Government will also provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Committee would also be grateful if the Government would indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3, paragraph 1. In addition the Committee would be grateful if the Government would provide particulars on how due regard is had to the age of the person to be examined and the nature of the duties to be performed, in prescribing the nature of the examination as required by Article 3, paragraph 2.

[The Government is asked to report in detail in 1996.]

Convention No. 114: Fishermen's Articles of Agreement, 1959

Cyprus (ratification: 1966)

The Committee notes that the Government's report has not been received. In previous reports, the Government had referred to various practical and legal difficulties arising in particular from the fact that fishing vessels registered in Cyprus belong to shipowners of various nationalities, using international crews and ports in different countries of the world.

The Committee would be grateful if the Government would supply a report on any development in the matter, including any new elements resulting from the discussions held at the Office.

Liberia (ratification: 1960)

The Committee refers to its previous comments and asks the Government to provide full information on each provision of the Convention and each question in the report form approved by the Governing Body.

[The Government is asked to report in detail in 1996.]

Panama (ratification: 1970)

The Committee notes the information provided by the Government in its report. It notes that the model articles of agreement for fishermen have still not been adopted. The Committee hopes that the Government's next report will indicate that the above-mentioned model articles of agreement have been adopted and that they will ensure the application of *Article 6, paragraphs 3(a), (d), (e), (f), (g) and (i) of the Convention* (particulars to be recorded in the articles of agreement). Furthermore, the Committee asks the Government to indicate the measures taken or envisaged to ensure the application of *Article 3, paragraph 4* (provisions of the national law to ensure that the fisherman has understood the agreement).

Point V of the report form. The Committee notes the text of the collective agreement and the statistics supplied with the Government's report. Please provide information on the number and nature of infringements recorded relating to the application of the Convention.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Mauritania, Tunisia.*

Convention No. 115: Radiation Protection, 1960

Brazil (ratification: 1966)

The Committee notes the information supplied by the Government in its report.

1. In its previous observation, the Committee had referred to comments made by the National Commission of Workers in Nuclear Energy (CONTREN) concerning dangerous working conditions to which workers are exposed in the nuclear industry; it had noted the Government's indication that coordinated action was to be undertaken with the social partners to determine the actual situation in the nuclear industry in order to bring about the necessary changes, and that working conditions needed to be reformulated by collective agreements. The Committee had accordingly asked the Government to communicate information thus collected concerning the present situation in the nuclear industry as well as any collective agreements relevant to the application of the Convention.

The Committee notes that this information has not yet been communicated to the Office. It must, therefore, reiterate its request for this information.

2. *Articles 3 and 6, paragraph 2, of the Convention.* In its previous observation, the Committee had referred to the explanations provided in its 1992 general observation under this Convention where it drew attention to the revised exposure limits adopted on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP) and asked governments to indicate the steps taken to ensure effective protection of workers against ionizing radiation and to review maximum permissible doses of ionizing radiations in the light of current knowledge. The Committee notes with interest the Government's indication in its report that the Coordinating Committee for Protection concerning the Brazilian Nuclear Programme (COPRON) has been sent a proposal for modifying legislation in the light of these recommendations of the ICRP. The Committee hopes that the Government will soon be in a position to supply information on the amendments adopted or envisaged in this regard, a certain number of points are again being raised in a direct request addressed directly to the Government.

[The Government is asked to report in detail in 1996.]

Finland (ratification: 1978)

The Committee notes the information supplied by the Government in its latest report.

1. *Articles 3, paragraph 1, and 6, paragraph 2 of the Convention.* Further to its general observation of 1992 under the Convention, the Committee notes with satisfaction the adoption and coming into force of the new Radiation Act (592/91) and Radiation Decree (1512/91) which are based on the 1990 Recommendations of the International Commission for Radiological Protection (ICRP publication No. 60); the new legislation, inter alia, sets forth the principles of licensing, optimization and individual protection related to the use of radiation, has lowered the dose limits for radiation workers and for other persons, with specific dose limits for pregnant workers, in accordance with the ICRP Recommendations, and also covers natural radiation. The Committee likewise notes with satisfaction from the Government's report that, under amendment 1192/90 of

the Sickness Insurance Act and amendment 717/91 of the Sickness Insurance Decree (473/63), the Council of State Decision concerning protection against occupational risk of mutagenic and teratogenic damage and of impaired reproduction (1043/91), and the Ministry of Labour Decision on factors posing a risk of mutagenic or teratogenic damage or of impaired reproduction (1044/91), a pregnant woman working in jobs or conditions in which the pregnancy or the development of the foetus may be endangered by a chemical substance, (ionizing) radiation or contagious disease must, if possible, be assigned other suitable work, unless the source of the risk can be eliminated from the work or working conditions. A doctor familiar with the working conditions determines the extent of the risk case by case. If no other work can be assigned, the worker is entitled to special maternity leave for the duration of the pregnancy.

2. In its previous observation the Committee had noted observations made by the Central Organization of Finnish Trade Unions (SAK) that there were problems with the enforcement of radiation protection legislation with regard to the many outside workers employed by nuclear power plants, particularly for annual maintenance, and that the labour protection delegates and shop stewards did not always receive adequate information about radiation protection. The Committee notes the Government's reply in its report that by virtue of several decisions of the Council of State (i.e. 1672/92 and 743/78), issued in accordance with the Occupational Health Care Act (743/78), all those who may be exposed to ionizing radiation at work are covered by the prescribed health checks, that employers are obliged to give these workers adequate information in regard to occupational health hazards at the workplace, their prevention and the correct working methods, and that under section 6 of the Occupational Health Care Act, the labour protection committee and the labour protection delegate are entitled to obtain from the occupational health care personnel such information obtained by them in their work which is relevant to the health of workers and the promotion of a healthy working environment. The Committee also notes the Government's indication in its report that the Central Organization of Finnish Trade Unions has stated that the present practice at workplaces is appropriate and that the provisions are being obeyed.

3. The Committee is raising certain questions in a request addressed directly to the Government.

Ghana (ratification: 1961)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

> 1. In comments it has been making for over 15 years, the Committee has noted that protection against hazards due to radiation has only been provided by means of the non-binding Code of Practice for the Protection of Persons Exposed to Ionizing Radiations; the Committee had also taken note of the Government's indication that a Radiation Bill was being prepared in order to give legal effect to the Code of Practice. In its 1989 observation, the Committee noted the Government's indication that the Radiation Bill had still not been adopted, but that it would be given prompt attention upon the re-establishment of the National Advisory Committee on Labour. The Committee notes from the Government's report, received in 1991, that there has been no change in the application of the Convention.
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> The Committee would call the Government's attention to its general observation under this Convention which sets forth the revised system of radiological protection adopted by the International Commission on Radiological Protection on the basis of new physiological findings in its 1990 Recommendations (Publication No. 60). The Committee would recall that, under *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*, all appropriate steps shall be taken to ensure effective protection of workers against ionizing

radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. The Government is requested to indicate the steps taken or being considered in relation to the matters raised in the conclusions to the general observation, in particular as regards bringing the Radiation Bill under preparation into conformity with the present state of knowledge.

The Committee hopes that the Radiation Bill with any necessary amendments will soon be adopted and that it also will ensure the application of the following provisions of the Convention which are not covered by the Code of Practice: *Article 9, paragraph 2* (instructions to be given to workers as to the precautions to be taken for their health and safety when working with ionizing radiations); *Article 13(a), (b) and (d)* (circumstances under which, due to the nature and/or degree of exposure, workers shall undergo appropriate medical examinations, employers shall notify the competent authority and shall take any necessary remedial action on the basis of the technical findings and the medical advice); and *Article 14* (to ensure that no worker is employed or continues to be employed in work involving exposure to ionizing radiations contrary to qualified medical advice). The Government is requested to indicate the progress made in these respects.

II. The Government is requested to provide information concerning the methods by which application of the Code of Practice is presently supervised and enforced, as requested under *point III of the report form*, as well as any relevant extracts from official reports concerning the practical application of the Convention, as called for under *point IV of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sri Lanka (ratification: 1986)

The Committee notes the information supplied by the Government in its report on the application of the Convention and the observations forwarded by the Ceylon Workers' Congress.

In previous comments the Committee noted that the Atomic Energy Authority had drafted new regulations incorporating the 1990 recommendations of the International Commission on Radiological Protection (ICRP).

The Committee notes the Government's indication in its report that dose limits for radiation workers and the general public as recommended by the ICRP will be put into effect after the new regulations are approved by the Ministry of Science, Technology and Human Resources Development and by Parliament. It also notes the indication by the Ceylon Workers' Congress that by 1 August 1994, the draft amendments proposed by the Atomic Energy Authority were still with the legal draftsmen and further action to present them to the legislative could only be taken when they were received back at the Atomic Energy Authority, and that the Chairman, AEA, indicated that the comments made by the Committee of Experts in respect of Articles 1, 7, 12, 13(a), 13(c) and 14 had been taken into consideration.

The Committee hopes that new regulations ensuring the full application of the Convention will be adopted in the near future, and that the Government will soon be in a position to supply the text of the provisions adopted. It again addresses a direct request to the Government on certain points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Denmark, Djibouti, Egypt, Finland, Greece, Iraq, Italy, Poland, Slovakia, Sri Lanka.*

Convention No. 117: Social Policy (Basic Aims and Standards), 1962

Brazil (ratification: 1969)

The Committee noted, in its previous comments, the observation made by the Unique Workers' Central (CUT) concerning the payment of wages to some Brazilian workers engaged in civil construction in Argentina. The Committee notes that the CUT withdrew this observation, by its communication to the ILO Office, Brazil, dated 30 May 1994, in view of the improvement to the conditions of employment in the sector brought about by the combined efforts of Brazilian and Argentinian trade unions and of the Ministry of Labour of Brazil.

The Committee hopes that the Government will provide information in its future reports on the application in practice of the provisions, in particular of *Article 8 of the Convention*, in accordance with *point V of the report form*, and include information on any difficulties encountered.

The Committee is also addressing a direct request to the Government concerning certain points.

Nicaragua (ratification: 1981)

The Committee notes that the Governing Body at its 261st Session (November 1994) entrusted the examination of a representation made by the Latin American Central of Workers (CLAT), under article 24 of the Constitution, alleging non-compliance by Nicaragua with certain Conventions including Convention No. 117, to a tripartite committee.

Pending the Governing Body's adoption of the conclusions and recommendations of the above committee, the Committee is addressing a direct request to the Government concerning the application of *Articles 7, 8 and 15 of the Convention*, which are not referred to in the above-mentioned representation.

Syrian Arab Republic (ratification: 1964)

In its previous direct request in 1992 and observation in 1994, the Committee noted proposed draft amendments to the Labour Code No. 91 of 1959. The Committee now notes the Government's report dated 1 February 1995, which attaches a copy of a letter addressed to the Minister of the Presidency from the Minister of Social Affairs and Employment, seeking clarification of the status of the draft legislative decree to amend the said Labour Code.

The Committee however notes that the latest version of the legislative text attached to the Government's report dated 20 April 1994 amends sections 11, 88(2), 117, 121 and 216 of the Labour Code, but does not include the provisions proposed in earlier versions to become section 51(b) in order to fix the maximum amount of advances on wages.

The Government indicates in the 1994 report that it understands Article 12 of this Convention as requiring the competent authority to determine the amount of advances to encourage the worker to accept the employment but not dealing with advances for other reasons. The Committee again points out that, while *paragraph 2 of Article 12* requires the limitation on the amount of advances which may be made to a worker in consideration of taking up employment, *paragraph 1 of Article 12* obliges the competent authority to regulate the maximum amount of advances on wages whenever made and whatever the reasons therefor. The Committee recalls that the present provision of section 51 of the Labour Code only regulates the manner of repayment of advances on wages.

The Committee trusts that the Government will soon take necessary measures to limit the maximum amount of advances on wages made not only to a worker in consideration of taking up employment but also advances on wages made for whatever reason during the employment, so as to give full effect to this provision of the Convention, on which it has been commenting since the ratification. The Committee requests the Government to indicate progress made and to supply a copy of adopted amendments in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bahamas, Bolivia, Brazil, Central African Republic, Ecuador, Ghana, Guatemala, Guinea, Jamaica, Jordan, Kuwait, Malta, Nicaragua, Panama, Portugal, Sudan, Tunisia, Venezuela, Zaire*.

Information supplied by *Romania* in answer to a direct request has been noted by the Committee.

Convention No. 118: Equality of Treatment (Social Security), 1962

Central African Republic (ratification: 1964)

The Committee notes with regret that the Government's report contains no new information on the issues it has been raising for many years and which have been discussed on several occasions in the Conference Committee, the last one being in June 1993. The Committee recalls that on that occasion the Government stated, amongst other things, that it had actively prepared the necessary drafts to amend the legislation, despite the social unrest affecting the functioning of the administration. In these circumstances, the Committee again expresses the hope that the changes in the legislation mentioned by the Government will be adopted shortly, by legislative, regulatory or other means and that they will ensure that full effect is given to the Convention as regards the following points:

Article 4 of the Convention, branch (g) (Employment injury benefit). Section 27 of Act No. 65-66 of 24 June 1965 on industrial accident compensation should be supplemented by an express provision that in the case of a victim of an occupational injury who was a national of a State that has accepted the obligations of the Convention for branch (g) (Employment injury benefit), his or her dependents (survivors), even though they were not resident in the Central African Republic at the time of the victim's death and continue not to be so resident, may claim survivors' benefit if it is proved that they were actually dependent on the victim at the time of his death.

Article 5, branch (e) (Old-age benefit). The national law should be supplemented by a provision for the payment of old-age benefit in case of residence abroad both to nationals of the Central African Republic and to nationals of any other member State that has accepted the obligations of the Convention for branch (e) (Old-age benefit). In this connection, the Committee recalls that section 24 of Ordinance No. 81/024, of 16 April 1981, establishing an old-age, invalidity and survivors' pensions scheme for wage-earners, and section 35 of Decree No. 423/340 of 10 August 1983, provide that benefits shall be suspended when the beneficiary does not reside in the national territory, except where there is reciprocity or an international agreement. It asks the Government to indicate whether Convention No. 118 is regarded as an "international agreement" within the meaning of above-mentioned sections 24 and 35. If so, the Government is asked to indicate the measures taken or envisaged by the Social Security Office of the Central African Republic to ensure that, in practice, old-age benefit is paid in the event of residence abroad to both nationals of the Central African Republic and nationals of countries that have accepted the obligations of the Convention for branch (e) (to date: Barbados, Brazil, Cape Verde, Egypt, Guinea, Iraq, Israel, Italy, Kenya, Libyan Arab Jamahiriya, Mauritania, Mexico, Netherlands, Rwanda, Syrian Arab Republic, Tunisia, Turkey, Venezuela and Zaire).

The Committee hopes that the Government will not fail to send a report for examination at its next session and that it will contain detailed information on the progress made in this respect.

Guinea (ratification: 1967)

Article 5 of the Convention. In reply to the Committee's previous comments, the Government states that the draft text of the Social Security Code which was revised with the technical assistance of the ILO, will give full effect to the provisions of the Convention when it is adopted. The Committee takes due note of this information. It hopes that it will be possible to adopt in the near future the above text of the Social Security Code and that, when adopted, it will give full effect to Article 5 of the Convention, under which the provision of old-age benefits, survivors' benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreement with such country, both to nationals of Guinea as also to nationals of any other State which has accepted the obligations of the Convention in respect of the corresponding branch.

The Committee requests the Government to supply information on the progress made in this respect.

Article 6. The Committee hopes that the above draft text of the Social Security Code will also make it possible to give effect to Article 6, under which any State which has accepted the obligations of the Convention in respect of "family benefit" (branch (i)) must guarantee the grant of family allowances both to its own nationals and to the nationals of any other State which has accepted the obligations of the Convention for that branch, as well as to refugees and stateless persons, *in respect of children who reside on the territory of any such State*, under conditions and within limits to be agreed upon by the States concerned.

Iraq (ratification: 1978)

Article 5 of the Convention (Provision of benefits abroad). Referring to its previous comments concerning the application of this provision of the Convention, the Committee notes the information contained in the Government's report as well as the discussions which took place in the Conference Committee in 1994. The Committee recalls that for several years it has been asking the Government to indicate the measures taken or contemplated with a view to removing numerous restrictions concerning payment of benefits abroad for Iraqi nationals as well as foreign nationals, contained in section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and in Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq, which are contrary to this provision of the Convention. In this respect, the Committee notes from the Government's report, that the situation has remained unchanged. The

Government's last report mainly reproduces the information contained in its previous report and in the statements made by the Government representative during the discussion of this case in the Conference Committee in 1993 and 1994, according to which, rules concerning the payment of benefits abroad are of a purely procedural nature and do not constitute restrictions on the payment of benefits conflicting with the Convention. The Committee refers in this respect to the request it is addressing directly to the Government in which it reviews in detail the effect on the application of the Convention of section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and Instruction No. 2 of 1978 respecting the payment of social security pensions to persons who leave Iraq.

The Committee nevertheless notes, from the information supplied in the report and in the Conference Committee in 1994 by the Government representative, that the Government confirms its intention to study the possibility of modifying the national legislation and to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of Iraq's economic situation. In view of the fact that no payment of benefits abroad has yet been made, the Committee cannot but once again urge the Government to adopt in the near future measures ensuring the provision of long-term benefits in the case of residence abroad for Iraqi nationals and for nationals of other countries which have accepted the obligations of the Convention in respect of the branch in question, as well as for refugees and stateless persons, and to remove the restrictions in this respect in the light of the more detailed comments contained in the Committee's direct request.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that, for the second consecutive year, the Government's report on the application of this Convention, which has been the subject of discussion in the Conference Committee in June 1992, has not been received. In this situation the Committee cannot but once again urge the Government to take all the necessary measures, in accordance with its earlier assurances, to ensure full application of the Convention on the following points:

1. *Article 3, paragraph 1, of the Convention* (also in conjunction with Article 10).

(a) Under section 38(b) of Social Security Act No. 13 of 1980 and regulations 28 to 33 of the Pension Regulations of 1981, non-Libyan residents receive only a lump sum in the event of premature termination of work whereas nationals are guaranteed, under clause (a) of section 38 of Act No. 13, maintenance of their wages or remuneration, which is contrary to this provision of the Convention. The Committee asks the Government to indicate the measures taken or envisaged to amend the above provisions in order to ensure for nationals of States for which the Convention is in force (and for refugees and stateless persons) the same benefits as nationals in case of premature termination of work.

(b) Under regulations 5 and 8 of the Regulations concerning registration, contributions and inspection issued under Social Security Act No. 13 of 1980, the affiliation of non-Libyan officials and self-employed workers to the social security scheme is voluntary unless there is an agreement with the country of which these workers are nationals. The Committee again draws the Government's attention to the fact that where, as in the Libyan Arab Jamahiriya, the affiliation of nationals to the social security scheme is compulsory, the voluntary affiliation of certain categories of foreign workers to the social security scheme is contrary to the principle of equality of treatment laid down in Article 3, paragraph 1 (subject to the exceptions provided for in Article 10, paragraph 2). The

Committee asks the Government to indicate the measures taken or contemplated to ensure for these categories of foreigners, when they are nationals of a State for which the Convention is in force, and also for refugees and stateless persons, compulsory affiliation to the social security scheme.

(c) Under regulation 16, paragraphs 2 and 3, and regulation 95, paragraph 3, of the Pensions Regulations of 1981, non-national contributors, without prejudice to special social security agreements, who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, regulation 174, paragraph 2, of these Regulations seems to imply *a contrario* that the qualifying period is also required for pensions and allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee points out that the above-mentioned provisions of the Pension Regulations of 1981 are incompatible with Article 3, paragraph 1, of the Convention. The Committee accordingly requests the Government to indicate the measures taken or contemplated to ensure the application of this provision of the Convention on this point as well.

2. *Article 5.* Regulation 161 of the 1981 Pension Regulations provides that pensions or other monetary benefits *may* be transferred to beneficiaries resident abroad without prejudice, where appropriate, to agreements to which the Libyan Arab Jamahiriya is a party. The Committee points out that, by virtue of this provision of the Convention, each Member that has ratified it *must* guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits and death grants, and also employment injury pensions. The Committee requests the Government to indicate in its next report the measures taken or envisaged to give effect in law and practice to this basic provision of the Convention.

The Committee hopes that the Government's next report will contain detailed information on the progress made in ensuring full application of the above-mentioned provisions of the Convention.

In addition the Committee draws the Government's attention to certain points which it is raising in a direct request.

Mauritania (ratification: 1968)

Article 5 of the Convention (provision of benefits abroad). The Committee refers to its previous comments on the implementation of the recommendations of the Committee appointed by the Governing Body to examine the representation made by the National Confederation of Workers of Senegal under article 24 of the ILO Constitution, which, among other things, asked the Government to take measures to establish and enforce the provision of benefits due to Mauritanian nationals who left Mauritania following the events of 1989. In its report the Government indicates that anyone who can demonstrate that he was entitled to the benefits before 1989 can have these entitlements re-established for him and the provision of benefits is thus ensured to the persons concerned, in accordance with the provisions of the Convention. The Government adds that it will provide information on the application in practice of the Convention as soon as possible.

The Committee takes due note of this information. It asks the Government to provide further detailed information on the nature of the measures taken — in conjunction with the competent authorities in Senegal, if necessary — and the results obtained (backed up by statistics), in ensuring the maintenance of the acquired rights of Mauritanian nationals who had to leave the country after the events of 1989. The Committee recalls in this connection that, according to the information supplied previously by the Government, the joint Mauritanian-Senegalese Committee, at its meeting of November 1993, decided that the bodies that were competent for the pensions, wage orders and arrears concerning the nationals of each country, would receive instructions to settle the entitlements of the beneficiaries for the period that has elapsed since 1989. The Committee asks the Government to provide a copy of these instructions.

The Committee once again expresses the hope that the Government will be able to provide, as it said it would, with its next report, in accordance with *point V of the report form* on the Convention adopted by the Governing Body, detailed information on the practical application of the Convention, including statistics of the number, nature and amount of the benefits transferred to beneficiaries who reside outside the country, and particularly to Mauritanian nationals who had to leave Mauritania following the events of April 1989.

Syrian Arab Republic (ratification: 1963)

1. *Article 5 of the Convention.* With reference to its previous comments, the Committee recalls that, since 1984, the Government has been referring to a draft Decree to amend section 94 of the Social Insurance Code to provide that the beneficiary of a pension, his dependents or the dependents of the insured person, who leave the territory of the Syrian Arab Republic, may require that the pension to which they are entitled be transferred to the country in which they reside. In its last report the Government simply indicates that it has asked the Public Social Security Institution for information on the status of the amendment to section 94 and that it will not fail to inform the Committee of any developments in this area. In these circumstances, the Committee is bound to urge the Government once again to ensure that the necessary measures are taken for the adoption of the above-mentioned draft Decree in the near future, in order to give full effect to this provision of the Convention.

2. *Article 10.* In its previous observation the Committee expressed the hope that the Government would take the necessary measures to include in the new Bill on social insurance a provision expressly establishing its application to refugees and stateless persons, in accordance with this Article of the Convention. The Committee notes that the Government has asked for specific information on this matter from the Public Social Security Institution, and trusts that the Government will not fail to indicate any progress made in this respect in its next report.

Turkey (ratification: 1974)

The Committee takes note of the communication, dated 4 July 1994, from the Confederation of Turkish Trade Unions (TURK-IS) containing comments on the application of a number of ratified Conventions, which was transmitted by the Office to the Government for observations on 8 August 1994. As regards Convention No. 118, this communication raises questions concerning the application of *Article 3, paragraph 1, of the Convention*, to non-nationals. In this connection, the Committee would like the Government to refer to its comments made in the direct request of 1992. It hopes that the Government's next report will contain detailed information on the measures taken or contemplated to ensure full application of the Convention in law as well as in practice.

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In addition, requests regarding certain points are being addressed directly to the following States: *Central African Republic, Guinea, Iraq, Jordan, Libyan Arab Jamahiriya, Uruguay.*

Convention No. 119: Guarding of Machinery, 1963

Central African Republic (ratification: 1964)

Article 2, paragraphs 3 and 4, of the Convention. In the comments that it has been making for more than 15 years, the Committee has referred to section 37(3) of General Order No. 3758, which provides that dangerous machines or parts of machines of which the sale, exhibition or hire is prohibited under section 37(1) shall be specified by Order.

The Committee noted that, according to the Government's last report, the draft Decree provided for under section 37 above was before the competent authorities and had not yet been adopted. The Government repeats this information. It also indicated that the above draft text would give effect to *Articles 10, paragraph 1, and 11* of the Convention, concerning the measures that must be taken by the employer to bring national laws or regulations relating to the guarding of machinery to the notice of workers and to instruct them regarding the dangers arising from their use. Article 11 provides that no workers shall use any machinery without the guards provided being in position nor make inoperative these guards, while guaranteeing that, irrespective of the circumstances, no worker shall be required to use any machinery without the guards provided being in position or if they have been made inoperative.

The Government states in its latest report that the legislative procedure for the adoption of the texts envisaged to give effect to the above provisions of the Convention has not been completed due to the blockage in the political institutions before the change which occurred in 1993, and that measures have been taken by the authorities to speed up the adoption of the texts in question.

The Committee once again hopes that the text in question will be adopted in the very near future and requests the Government to supply a copy of it with its next report.

Madagascar (ratification: 1964)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

> *Articles 2 and 4 of the Convention.* In the comments it has been making for a number of years, the Committee observed that Order No. 889 of 20 May 1960 contains, in sections 44 to 58, detailed provisions on the guarding of machinery, but that these provisions are applicable only to the use of the machinery and therefore have a more restricted scope than the provisions of the Convention. This instrument prohibits the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts specified in paragraphs 3 and 4 of the same Article are without appropriate guards. The Committee requested the Government to take the necessary measures to give full effect to the Convention on this point.
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> In its report for 1988-89, the Government stated that sections 55 to 58 of Order No. 889 lie within the terms of the Convention since they prohibit the employer from using machinery on which the dangerous parts are not protected and which have not been formally approved. The Government added that, by extension, the prohibition of the sale, hire or transfer of this machinery may be deduced; however, a draft Order to amend or supplement Order No. 889

of 20 May 1960 was under examination by the Directorate of Labour and the new text will take into account the provisions of the Convention.

The Committee refers to paragraphs 55 to 63 of its 1987 *General Survey on Safety in the Working Environment*, in which it emphasized that "a mere prohibition of the use of inadequately guarded machinery cannot ... be considered as obviating the need to apply the requirements of Part II of the Convention concerning its sale, hire and transfer" (paragraph 62), and that "the prohibitions laid down in the Convention apply not only to the initial sale but also to subsequent sales by agents and to the hire, transfer and exhibition of unguarded machines, whether new or reconditioned" (paragraph 70).

The Committee once again urges the Government to take the necessary measures to give full effect to the Convention.

Morocco (ratification: 1974)

The Committee notes the information supplied by the Government in its report in answer to its previous comments.

1. *Article 11 of the Convention*. For a number of years the Committee has been drawing the Government's attention to the need to take measures to ensure that no worker may use or be required to use machinery without the guards provided being in position; and that no worker may make such guards inoperative.

In its last report the Government states that the regulatory part of the draft Labour Code will provide expressly that no worker may use machinery of which the guards are inoperative. The Committee hopes that the relevant provisions will be adopted in the near future and asks the Government to provide a copy of them.

2. *Article 17*. In earlier comments the Committee noted the lack of any measures to ensure the application of the provisions of the Convention to machinery used in agriculture. The Government referred in its last report to section 37 of the Dahir of 24 April 1973 which establishes the conditions of employment and payment of wages of agricultural workers. Under this provision the machinery must be installed and maintained in the best possible conditions of safety. The Committee notes that the measures laid down in the above provision are of a general nature and only partly apply the provisions of the Convention as regards this sector. It once again expresses the hope that the Government will take the necessary measures, possibly in the draft of the Labour Code now being prepared, to give full effect to the Convention on this point.

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In addition, requests regarding certain points are being addressed directly to the following States: *Dominican Republic, Kuwait, Malta, Paraguay*.

Convention No. 120: Hygiene (Commerce and Offices), 1964

Guinea (ratification: 1966)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation on the following points:

1. The Committee has noted the indication provided in the Government's report received in 1992 that the Committee's previous comments would be taken into account when the texts regulating occupational safety and health are drafted. The Committee hopes that the texts necessary to ensure the full application of the Convention will be drafted in the near future in consultation with the representative organizations of workers and employers concerned, in accordance with *Article 5 of the Convention*.

The Committee notes that section 171 of the Labour Code provides that ministerial orders shall determine general measures regulating ventilation, lighting, drinking-water and noise and vibrations in all establishments covered by the Code. The Committee hopes that these orders will be drafted in the near future and that they will ensure the full application of *Article 8* (provision of sufficient and suitable ventilation), *Article 9* (sufficient and suitable lighting; including, as far as possible, natural lighting), *Article 12* (sufficient supply of wholesome drinking-water available to all workers) and *Article 18* (measures to ensure that noise and vibrations at the workplace are reduced as far as possible).

Furthermore, the Committee notes that no provision exists to ensure that sufficient and suitable seats are supplied to workers, nor to ensure a reasonable opportunity of using the seats, in accordance with *Article 14*. The Government is requested to indicate the measures taken or envisaged to ensure the application of this Article.

2. *Article 1 of the Convention*. The Committee has noted the Government's indication in its report received in 1992 that its previous comments concerning the public service would be taken into account when occupational safety and health regulations are drafted. The Committee would recall that all workers who are mainly engaged in office work, including workers in the public service, are covered by the Convention. The Committee, therefore, hopes that the Government will take all necessary measures in the near future to ensure the full application of the Convention to the public service and requests the Government to indicate the progress made in this regard.

Madagascar (ratification: 1964)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matter:

> For many years, the Committee had been calling the Government's attention to the fact that there were no specific laws or regulations to ensure the full application of *Articles 14 and 18 of the Convention*, which provide that seats shall be supplied to all workers without distinction of sex and that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible. Since 1975, the Government has stated in its reports that the Order provided for by the Labour Code of 1975 would give full effect to the above-mentioned provisions of the Convention. The Committee had noted that no progress appeared to have been made in the adoption of this Order. The Committee trusts that this Order will be adopted in the near future and that it will give full effect to the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Djibouti, Ghana, Iraq*.

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980]

Bolivia (ratification: 1977)

1. *Article 5 of the Convention*. In its previous comments the Committee noted that, according to the statistics provided by the Government and to the ILO Year Book of Labour Statistics, 1991, the proportion of protected employees working in Bolivian industrial undertakings was lower than the proportion prescribed by the Convention ("*75 per cent* of all employees in industrial undertakings ..."). In these circumstances the

Committee asked the Government to indicate the measures taken or contemplated gradually to extend the employment injury branch of the social security scheme to new categories of workers or employees in industrial undertakings. Since the Government's report contains no reply on this matter, the Committee is bound to express, once again, the hope that the Government will adopt the necessary measures for this purpose. It also asks the Government to provide updated statistical data of the total number of active insured persons employed in industrial undertakings as defined in *Article 1(c) of the Convention*, and the total number of employees in those undertakings.

2. *Article 7.* The Government states in its report that it has noted the Committee's recommendation concerning commuting accident coverage. The Committee asks the Government to indicate in its next report the progress made in this respect.

3. *Article 8.* In its answer to the Committee's previous comments, the Government states that it has noted the recommendation that, in a future edition or revision of the Social Security Code, an updated list of occupational diseases should be published, along with the activities likely to cause them, in conformity with schedule 1 annexed to the Convention. The Committee asks the Government to indicate any progress made in this area in its future reports.

4. *Article 9, paragraph 3.* With regard to the previous comments, the Government indicates in particular that insured persons and beneficiaries suffering from chronic diseases who no longer qualify for medical care provided through social security are entitled, unconditionally, to benefits in kind in hospitals of the Ministry of Public Health. The Committee notes this statement. It points out, however, that the Government has not provided the legislative, regulatory or other texts stipulating the type of medical care provided, in accordance with section 113 of Decree No. 14643 of 1977, in the specialized centres of the Ministry of Social Security and Public Health. It therefore asks the Government once again to provide these texts.

5. The Committee notes with interest that the Government considers that assistance from the ILO Regional Adviser for Latin America would be most useful in drafting the report in the manner established in the report form adopted by the Governing Body with regard to *Articles 13, 14 and 18 (in relation to Articles 19 and 20), and 21 (in relation to Articles 14 and 18) of the Convention.* The Committee notes this statement with interest. It expresses the hope that the Government will be able, possibly with the assistance of the Regional Adviser, to provide the above-mentioned information.

[The Government is asked to report in detail in 1997.]

Guinea (ratification: 1967)

With reference to its previous comments the Committee notes the information supplied by the Government in its report. It wishes to draw the Government's attention to the following points.

1. *Article 8 of the Convention.* The Committee notes with interest the Government's statement that in 1992 the National Social Security Fund together with the National Occupational Medicine Service revised the list of occupational diseases, increasing it from 13 to 29 items, thus aligning it with the list appended to Schedule 1 of the Convention, as amended in 1980. The Committee asks the Government to provide a copy of the list, indicating whether it is now in force.

2. *Article 15, paragraph 1.* In answer to the Committee's previous comments, the Government indicates that, in accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee

recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.

3. *Articles 19 and 20.* The Committee notes the Government's reply. It notes however that the Government's report does not contain the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention. In these circumstances the Committee once again asks the Government to indicate whether it avails itself of Article 19 or of Article 20 of the Convention in establishing that the percentages required by Schedule 2 of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under Article 19 or 20, depending on the Government's choice.

4. *Article 21.* In answer to the Committee's comments, the Government states that it has increased the benefits so as to ensure better coverage for victims of occupational accidents; furthermore, studies are under way with a view to a further increase in order to take fuller account of the economic context. The Committee notes this information. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

5. *Article 22, paragraph 2.* The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

6. The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.

7. Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 21 of the Convention.* With reference to its previous comments, the Committee notes with interest the Government's statement that, in accordance with sections 28 and 34

of the Social Security Act, No. 13 of 1980, the level of cash benefits currently payable for long-term benefits is reviewed following substantial changes in the cost of living or wage levels. It notes, however, that the Government's report does not contain the statistics requested in order to assess the manner in which this Article of the Convention is applied in practice. It therefore once again requests the Government to supply the statistics called for in the report form under this Article of the Convention.

Sweden (ratification: 1969)

The Committee notes the information supplied by the Government in its report. It recalls that in accordance with paragraph 47 of the report of the Committee set up to examine the representation made under article 24 of the ILO Constitution by the Swedish Trade Union Confederation (LO), the Swedish Confederation of Professional Employees (TCO) and the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by Sweden of Convention No. 121, which was approved by the Governing Body at its 258th Session in November 1993, the Government was asked to furnish a report on the application of the Convention containing information on the measures taken to ensure that the cash benefits for incapacity for work which are due to a victim of an employment injury are paid from the first day of incapacity, as well as on the definition of employment injury and the burden of proof.

As regards the question of the waiting period, the Government indicates in its report that, following the parliamentary election in September 1994, the new Government, in its first budget Bill introduced on 9 January 1995, announced a statutory amendment whereby sickness insurance benefits will be payable from the first day, with effect from 1 January 1997. Subject to the Government's proposals being passed by the Riksdag, the abolition of the one-day waiting period means that Sweden will again be discharging its obligations under the Convention. The Committee notes this information with interest. It asks the Government to supply the text of the relevant provisions as soon as they are adopted.

With respect to recent changes made in the work injury concept and in the burden of proof in work injury cases, the Government indicates that no test cases have yet been decided and, consequently, it is too early at present to pronounce on the implementation of the new rules; information of this kind will be supplied in due course. The Committee therefore hopes that the next report of the Government will contain full information on these subjects.

[The Government is asked to report in detail in 1996.]

Zaire (ratification: 1967)

The Committee notes with regret that, for the second consecutive year, the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 8 of the Convention.* In reply to the Committee's earlier comments, the Government states that the draft text to supplement the list of occupational diseases in the schedule to Ordinance No. 66-370 of 29 June 1966, which was prepared by the Social Security Reform Commission, will be submitted to the National Labour Board for examination before being transmitted to the competent authorities for enactment. The Committee takes note of this information. In view of the fact that the Committee has been commenting on the question of amending the list of occupational diseases for 20 years, it hopes that the above draft will be adopted shortly and that the list will contain the following additions: (a) diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic

series; (b) diseases caused by benzene or its toxic homologues, in accordance with the provisions of the Convention.

2. *Articles 13, 14 and 18* (in conjunction with Articles 19 and 20). In its report, the Government indicates that the maximum monthly remuneration that is subject to contribution for the pensions and occupational risks branches has increased from 2,000 zaires to 30,000 zaires. It also indicates that the Executive Council is in the process of examining draft legislation on the national employment and wage policy (adopted by the 25th Session of the National Labour Council, held from 17 to 22 July 1989), and that the text will fix a new guaranteed inter-occupational minimum wage which will affect the level of benefits. The Committee notes this information with interest. It also notes the proposals to increase the daily compensation rate for temporary incapacity. It notes, however, that the statistics provided by the Government in its report do not permit an appraisal of how effect is given to the above Articles of the Convention. Consequently, the Committee would be grateful if the Government would indicate in its next report whether it intends to have recourse to Article 19 or to Article 20 in comparing the amount of periodical benefits provided for in the national legislation with the minimum level prescribed by the Convention. It also asks the Government to provide the statistical information required by the report form under Articles 19 or 20 of the Convention. If the Government intends to have recourse to Article 19, it is asked, in particular, to state the maximum amount of periodical benefits payable in the event of temporary incapacity, total permanent incapacity and death of the breadwinner, and the wage of a skilled manual male employee chosen in accordance with paragraph 6 or paragraph 7 of Article 19. If the Government intends to have recourse to Article 20, it is asked to indicate the minimum amount of periodical benefits payable for each of the three contingencies mentioned above, and the amount of the wage of an ordinary adult male labourer chosen in accordance with paragraph 4 or paragraph 5 of Article 20. Please indicate also the amount of family allowance, if any, payable during employment and during the contingency.

3. *Articles 23 and 24, paragraph 2.* The Committee notes that the strengthening and extension of the regional social security committees responsible for ruling on appeals by insured persons were discussed during the work on social security reform at the 22nd Session of the National Labour Council. It also notes the Government's statement that the enactment of the new Social Security Code should make it possible to improve the operation of the social security system, in general, and of the regional committees. The Committee therefore asks the Government to provide detailed information on any progress made in the practical operation of the social security system and more particularly the regional committees, and to provide copies of the recommendations adopted in this connection by the National Labour Board. Furthermore, in connection with its previous comments, it again asks the Government to indicate whether the two regional committees still to be set up have now been constituted.

4. *Article 21.* The Committee would be grateful if the Government would provide information on the application of Article 21 of the Convention and supply the statistics required (under this Article) by the report form adopted by the Governing Body, concerning the readjustment of currently payable periodical benefits in the event of permanent incapacity and death of the breadwinner as a result of occupational injury.

5. Lastly, the Committee hopes that the new Social Security Code to which the Government referred in its report will enable full effect to be given to the Convention once it has been adopted; it asks the Government to provide a copy of it as soon as it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, a request regarding certain points is being addressed directly to *Libyan Arab Jamahiriya*.

Information supplied by *Japan* in answer to a direct request has been noted by the Committee.

Convention No. 122: Employment Policy, 1964

Algeria (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1992 and welcomes the detailed information contained in the report in reply to its previous comments. According to the statistics published by the ILO, which confirm those contained in the report, it notes that the unemployment rate, which was 17 per cent in 1989, rose to 19.7 per cent in 1990 and to 21.1 per cent in 1991. The results of the 1990 labour force survey point to characteristics of unemployment and its distribution which are a cause of concern: 85 per cent of the unemployed appear to be under 30 years of age and the average period of unemployment is two years. Furthermore, a significant and growing proportion of the unemployed have middle and secondary teaching diplomas. The Committee notes that data on employment by region should soon be available. It requests the Government to supply information which is as detailed as possible in its next report on the situation and trends of the active population, employment, underemployment and unemployment.
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> 2. The Government states that employment problems are central to the concerns of the public authorities and that the employment policy which is pursued forms part of the reforms undertaken since 1988 to promote renewed growth in economic activity and achieve a lasting improvement in the employment situation. Employment promotion is encouraged by means of measures to improve the general functioning of the economy, such as the introduction of independence for enterprises, their management according to market forces and the strengthening of social dialogue, as well as specific measures to promote investment and the creation of cooperatives, to reduce the cost of labour through tax and other financial incentives for recruitment and to increase the facilities provided to enterprises and flexible forms of employment.
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> 3. The Committee notes the information concerning the reorganization and development of public employment services. It notes that it was envisaged to double the number of local employment agencies over a five-year period. Furthermore, the regional integration of the administrative services covering employment and vocational training should improve the manner in which training is adapted to labour market needs. The Committee regrets in this respect that the report due on the application of the Employment Service Convention, 1948 (No. 88), has not been received (see the comments under that Convention). With regard to the worrying level of unemployment among young persons, the Committee notes in particular the measures intended to encourage the vocational integration of young persons through the creation of a fund to assist in the employment of young persons (FAEJ), a programme to create jobs which are of public utility and to extend training through apprenticeship. According to the evaluation undertaken on 30 June 1992, the number of young persons who have benefited from vocational integration, temporary employment and training measures over a two-year period amounts to 250,000. The Committee would be grateful if the Government would supply information on the action taken as a result of the various proposals and recommendations which were made in September 1992 to develop vocational integration measures. The Committee also notes that the promotion of women's participation in economic

activity is one of the development objectives, but that it is encountering constraints of a social and economic nature.

4. The report also refers to various employment measures planned by the Government in September 1992. The Committee notes that the planned measures include the commencement of major works, support for the creation of enterprises by young persons and the introduction of social protection measures against unemployment. It requests the Government to supply with its next report any evaluation which is available on the impact on employment of the various measure which have been taken. In more general terms, it would be grateful if the Government would describe the overall and sectoral employment objectives of development plans and programmes which are being implemented, or are under preparation, as well as the procedures adopted to ensure that the effects on employment of measures taken to promote economic development or other economic and social objectives receive due consideration *(Articles 1 and 2 of the Convention)*. With reference, finally, to *Article 3* of the Convention, in respect of which the report does not supply any new information, the Committee requests the Government to indicate in its next report the procedures by which the representatives of the persons affected by the measures to be taken are consulted concerning employment policies, both with regard to consultations with the representatives of employers' and workers' organizations and with representatives of other sectors of the economically active population, such as those working in the rural sector and the informal sector. The Committee hopes that the Government will soon be in a position to report an improvement in the employment situation.

Cuba (ratification: 1971)

1. The Committee notes the Government's report for the period ending June 1994. The Government states that its principal concern is to reduce under-employment with a view to increasing the effectiveness of the productive system. It states that it has now started the process of finding alternative employment for the surplus workforce, in conformity with the principles of social justice and equity. In addition to the restructuring of the workforce, the Government is seeking to promote the creation of new jobs, particularly jobs which do not require a high level of investment but which serve to provide the population with consumer goods and services. According to the report, the creation of useful jobs gives special priority to the tourism sector, which has the benefit of a substantial investment plan and where foreign capital plays an important role. The Government emphasizes that in the context of the current economic changes it has endeavoured to make its employment policy more flexible. The Committee notes these measures that have been taken with interest.

2. The Committee notes Decision No. 6/94 of 18 August 1994 on the conditions of employment and wages applicable to workers who have become surplus due to structural or institutional adjustments or to the decline in economic activity. These provisions are intended to improve the situation of such workers and to ensure that the state funds allocated to their protection are used in the most effective manner possible. Decision No. 6/94 has regard to alternative employment and skills training or retraining, as well as providing an income guarantee, but does not prevent workers from seeking jobs at their own initiative. Legislative Decree No. 141 of 8 September 1993 is intended to increase the numbers of self-employed persons.

3. In its previous comments, the Committee noted that the context for the application of the Convention was difficult, as confirmed by the information provided by the Government in its report. In order to be able to evaluate the labour market situation, the Committee would be grateful to be provided with the information requested in the report form approved by the Governing Body, including information on the situation, level and trends of employment, under-employment and unemployment. The

Committee also hopes that the Government will supply additional information enabling it to assess fully the manner in which the Convention is applied and the employment policy measures decided upon and kept under review within the framework of a coordinated economic and social policy, in accordance with ***Article 2 of the Convention***, with an indication in particular as to whether the measures described have contributed in practice to ensuring that work is as productive as possible. The Committee also recalls, as it has emphasized in its previous observations and in its comments on other basic Conventions, such as Conventions Nos. 29, 105 and 111, that the active employment policy must be aimed at ensuring that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for and obtain a job for which he is well suited ***(Article 1, paragraph 2(c))***. The Committee trusts that in its next detailed report on the application of the Convention the Government will supply information and statistics indicating the results obtained in terms of employment through the labour market policy measures and overall or sectoral plans (in sectors such as tourism the pharmaceutical and medical industry, bio-technology, the food programme) to which it refers.

Finland (ratification: 1968)

1. The Committee notes the Government's report for the period ending June 1994, as well as the comments made by the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals (AKAVA), which were transmitted with the report. It also notes the useful documentation attached to the report.

2. The information provided by the Government shows the continued deterioration during the reporting period of the worrying employment situation noted by the Committee in its previous observation. Unemployment rose rapidly in all sectors bringing the level of unemployment to around 19 per cent at the end of the period, compared with 12 per cent in 1992 and 3.5 per cent in 1990. However, the Government states that unemployment should decline slowly in 1994, as confirmed by the OECD in its survey published in February 1995. The SAK emphasizes that unemployment has quintupled since 1990 and has therefore grown more rapidly in Finland than in any other industrialized country. The AKAVA states that unemployment is also now affecting the public sector. The Government adds that one-third of young persons under 25 years of age are unemployed and that one unemployed person in five has been out of work for more than a year.

3. The Government reports various factors which have caused this sudden and unprecedented decline in economic activity and employment, such as the combined impact of the collapse of the export market to the ex-USSR, the recession on Western markets, and high interest rates. It considers that excessive borrowing and poor competitiveness forced the various sectors to reduce their demand for labour in order to maintain their profitability. The Government states that as a consequence the central aim of its economic policy is to reinforce the competitiveness of enterprises and put a stop to the growth in public expenditure. These objectives have been achieved in part as a result of the devaluation of the currency. However, the SAK considers that the Government has abandoned the long-term objective of employment policy, as illustrated by the replacement of the objective of full employment in its programme by that of "a high employment rate". The SAK also alleges that the Government knowingly allowed unemployment to increase to help achieve its objectives of reducing the deficit and inflation.

4. The Committee notes that the employment strategy of the labour administration "in a transition period", as explained by the Government, in recognition that Finland is drawing away from the ideal of a society with full employment, identifies youth and long-term unemployment as the most serious social problems. With regard to policy choices, according to the Government strategy established for the 1990s, priority has to be given to combating the segmentation of the labour market, which gives rise to exclusion, by affording particular attention to the difficulties encountered by older workers in adapting to structural changes and by young persons in seeking their first job. The role of the labour administration has now to be to encourage the adaptation of the labour supply, particularly through training measures, to the changing demand for labour, while at the same time adopting selective measures to influence the supply of labour. Furthermore, to promote demand for labour, the flexibility of the labour market has to be increased by modifying policy on hours of work and seeking new forms of work sharing. In this context of difficult adjustments, the services of the labour administration will have to respond to growing demand through greater local autonomy and the effective reallocation of their staff resources.

5. The Committee notes this general information on the reorientation of the labour market policy. However, it notes that the information provided on the training measures for the labour market which have actually been implemented does not show a significant increase during the reporting period in the resources allocated to such measures. It notes in this respect that, according to the SAK, the proportion of GDP allocated to active policy measures, which has only grown from 1 per cent in 1990 to 1.7 per cent in 1994, has not risen in proportion to the difficulties experienced, and particularly the rise in long-term unemployment. The SAK points out that the law has been changed to reduce the obligations of the State in this field. In this respect the Committee notes that the obligations established under the Employment Act of 1987, requiring the State and local authorities to provide temporary employment to unemployed youth and the long-term unemployed, which it noted in its previous observation had been substantially reduced, have since been completely abolished on the grounds that their cost was judged to be excessive.

6. The Government states that all important issues relating to employment policy are discussed with the social partners before political decisions are taken in the context of tripartite advisory bodies, such as the Council for Labour Affairs established under the Ministry of Labour and the Advisory Committee for Employment Policy. With reference to its previous observation, the Committee recalls that it would like the Government to provide information on any substantive debate that may have taken place on the position of the objective of full employment in its general economic policy. Noting the comments of the SAK, the Committee observes that the priority that has been given to reducing the deficit has resulted in the abolition of the measures established under the Employment Act of 1987, which were a major component of the employment policy pursued up to then. The Committee is bound to emphasize the importance, particularly in a context of recession and structural adjustment, of giving full effect to the provisions of *Article 3 of the Convention*, which requires the consultation of the representatives of the persons affected by the employment policy measures to be taken "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies". The Committee requests the Government to supply more detailed information in its next report on the consultations held, the opinions gathered and the manner in which they have been taken into account. In more general terms, the Committee hopes that the Government will be able to explain in its next report the manner in which its decisions in the field of

economic policy, particularly in relation to budgetary and monetary policies, industrial and trade policies, and prices, incomes and wages policies have contributed, "as a major goal", to the promotion of full, productive and freely chosen employment.

Germany (ratification: 1969)

1. The Committee notes the Government's full and detailed report for the period ending June 1994 containing valuable information on the matters that it raised in its previous observation. With reference to its previous comments, in which it hoped that the report would enable it to assess the manner in which the Convention is applied throughout the country, the Committee notes that, according to the Government, the difference in the development of the economy and of employment in the two parts of the country and the nature of the various measures required continue to justify a distinction between the former and new *Länder* for each of the points dealt with in the report.

2. The Government states that the reporting period coincided with a time of world recession which has had a negative impact on economic activity and employment. In this context, the continued growth of the active population combined with the ending of the stimulus produced by unification resulted in the Western part of the country experiencing a marked rise in the unemployment rate, which rose to above 8 per cent in June 1994, compared with 5.9 per cent in 1992. In the new Eastern *Länder*, the reduction in employment slowed down and almost came to a stop as a result of the strong recovery, with the unemployment rate stabilizing at around 15 per cent of the active population by the end of the period.

3. The Committee notes with interest the explanations provided by the Government on certain aspects of the economic policy pursued in recent years, particularly as regards the pursual of employment objectives and its conception of the "social market economy". The Government states that its policy consists mainly of giving free rein in so far as possible to market forces, combined with measures to attenuate social cost, particularly in relation to the high levels of unemployment in the new *Länder*. It considers that the decision to undertake monetary union was inevitable, despite the risk to employment of the brutal exposure of the poorly competitive economies of these *Länder* to the market. In the Government's opinion, experience has shown the soundness of this "shock therapy", accompanied by massive transfers of income and capital. The industrial restructuring which took place as a result of privatization has preserved many jobs and, since 1993, led to a significant economic recovery in the Eastern *Länder*, where labour productivity should rapidly reach the same level as in the Western part of the country. There may also have been a slight increase in employment, although the Government does not yet appear to be in a position to quantify it.

4. The Government provides substantial information on the active labour market measures which continued to be an essential component of its employment policy during the reporting period, particularly in the context of the accelerated transition to a market economy by the Eastern part of the country. The Government emphasizes that certain characteristics of the German labour market, such as the maintenance of the unemployment rate for young persons below the general level, in the East as well as the West, and the fact that it has been possible to contain long-term unemployment, are a direct result of the measures implemented, the scope of which was increased in proportion to the problems. The proportion of the budget allocated to the financing of active measures represented 29 per cent of total expenditure in 1993 in the Western part and 69 per cent in the new *Länder*. However, the Government considers that, in the new *Länder*, time will still be needed for the adaptation of the active population to new jobs,

despite the unprecedented scope of the retraining measures adopted, combined with measures to reduce the supply of labour, including early retirement.

5. The Committee also notes the provisions of the Employment Promotion Act of 1994, which tend to encourage the development of part-time work. In this respect, the Government may consider it useful to refer to the relevant provisions of the instruments on part-time work adopted by the International Labour Conference in 1994. The Committee also notes that the provisions facilitating recruitment for a fixed period as a means of promoting employment have been extended by the above Act until the year 2000. With reference to its previous observation, the Committee would be grateful if the Government would indicate whether measures have been taken or are envisaged to promote the transformation of fixed-term contracts concluded under these provisions into contracts without limit of time. It recalls in this respect that it is the responsibility of States parties to the Convention to ensure that the employment promotion measures that they adopt are not diverted from their objective, which should be to promote the lasting integration of their beneficiaries into employment.

6. With the development of part-time work, the Government intends to promote, in more general terms, measures and initiatives designed to improve the distribution of the volume of work. This goal is a result of its analysis that the objective of full employment cannot be achieved in the foreseeable future, even with a reasonable level of economic growth. The Committee hopes that the Government will soon be in a position to report an improvement in the employment situation throughout the country and requests it to continue supplying detailed information on all the measures that are taken or envisaged "within the framework of a coordinated economic and social policy" with a view to promoting "as a major goal" full, productive and freely chosen employment, in accordance with *Articles 1 and 2 of the Convention*. It would also be grateful if the next report contained more detailed and substantial information on the application of *Article 3*, concerning the manner in which consultations are held with the social partners on employment policy in the former and new *Länder*.

Honduras (ratification: 1980)

1. The Committee notes the Government's brief report on the application of several Conventions for the period ending June 1994. The Government considers that the various comments made by the Committee have emphasized the need to reform the legislation and states that a draft Labour Code, prepared in the context of the programme to modernize and strengthen the State, has now been submitted to the competent authorities. However, the Committee is bound to urge the Government to supply a detailed report on the employment policy measures adopted under the Convention and to supply the information requested on previous occasions on the following points:

(a) the situation, level and trends of employment, unemployment and under-employment and the impact of the measures adopted to assist particular categories of workers who frequently encounter difficulties in finding long-term employment. More generally, the Committee requests the Government to describe the principal policies adopted to promote productive employment, with an indication of the extent to which the employment objectives included in development plans and programmes have been or are being attained (please refer in this respect to the questions contained in the report form under *Article 1 of the Convention*, and the question on the promotion of employment for persons with disabilities raised by the Committee in paragraph 5 of its previous observation);

(b) the procedures adopted to ensure that the measures taken to promote economic development or other economic and social objectives contribute to the attainment of employment objectives, in accordance with *Article 2*;

(c) the manner in which account is taken, in the formulation and application of employment policy, of the experience and views of representatives of employers and workers. Please also indicate whether procedures have been established or are envisaged for the consultation of representatives of other sectors of the active population, such as workers in the rural and informal sectors, with a view to giving full effect to the fundamental provisions of *Article 3* of the Convention.

2. In the direct request which it is repeating, the Committee asks the Government to supply additional information on the action taken as a result of the technical cooperation activities of the ILO and on other aspects related to the application of the Convention (the activities of the National Vocational Training Institute, employment in the rural sector and public sector).

Italy (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1992 containing detailed information — albeit mostly for 1991 only — on the employment situation and the labour market policies implemented. The Committee refers to OECD data and notes that owing to moderate growth in employment there was a slight drop in the unemployment rate which fell from 11.5 per cent in 1990 to 11 per cent in 1991. Since the end of the reporting period, however, employment has ceased to grow and the unemployment rate reached 11.6 per cent in 1992. Furthermore, the major structural characteristics of unemployment and its distribution have remained, for the most part, unchanged. At best there has been a slight attenuation of the regional distribution of unemployment and a slight narrowing of the gap between male and female unemployment rates. Long-term unemployment which still affects approximately 70 per cent of the unemployed, and unemployment of over 30 per cent among the under-25 age group are still particularly worrying.
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> 2. The Government's report recalls the labour market measures to which the Committee already referred in previous comments. It notes in this connection that there was an appreciable drop in the number of training-work contracts, which fell from 470,000 in 1990 to approximately 200,000 in 1992 although, in 50 per cent of the cases, this type of contract has led to permanent jobs for the young people holding them. It would be grateful if in its next report the Government would give the reasons for this drop and continue to provide detailed information on the scope of the various labour market measures and the results obtained. The Committee also notes that Act No. 223 of 23 July 1991 introduced new accompanying measures for enterprise restructuring and incentives to recruit redundant workers and the long-term unemployed. Promotion of the employment of women was also stepped up during the period by the adoption of Act No. 125 of 10 April 1991 providing for positive action in the area of training and employment, and Act No. 215 of 25 February 1992 introducing incentives for women to establish enterprises. The Committee asks the Government to provide information on the effect that these new measures have had on the employment of the persons concerned.
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> 3. With reference to its previous observation, the Committee notes that, in the Government's view, the implementation of the tripartite agreement of March 1991 for the development of the South demonstrates the interdependence of economic development policies and the essential role of the social partners. It would be grateful if the Government would provide any available assessment of the results obtained. The Committee also notes that

following negotiations on wages policy, combating inflation and reducing the budget deficit, a new national collective agreement was concluded in July 1993, part of which deals with employment promotion. The Committee asks the Government to provide particulars of the above agreement indicating, more generally, how employment policy falls within "the framework of a coordinated economic and social policy". It hopes in this connection that the next report will indicate how the economic policy measures taken or envisaged in the areas of monetary, budgetary and fiscal policies, investment policy and regional development policy contribute to the pursuit of the objective of full, productive and freely chosen employment.

Netherlands (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1992. It notes from OECD data that the growth of employment, by 2.3 per cent in 1990 and by 1.3 per cent in 1991, has resulted in the continued reduction of the standardized unemployment rate, although at a slower pace than over previous years; this rate declined from 7.5 per cent in 1990 to 7 per cent in 1991 and 6.8 per cent in 1992. The Committee however notes that this trend has reversed since the end of the reporting period and that the unemployment rate has once again risen rapidly: according to OECD estimates, it is likely to reach 8.3 per cent in 1993. The Committee notes that long-term unemployment continues to account for around one-half of total unemployment. The Committee also notes the high rate of part-time work, particularly among women.
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> 2. The Government's report concentrates on measures to promote employment among specific categories of the population, such as women, young persons, the members of ethnic minorities and workers with disabilities. It also describes the various measures which have been taken to subsidize the employment of the long-term unemployed. The Committee would be grateful if the Government would supply information in its next report on the results achieved by the various measures which it has described. The Committee also notes the new information concerning the reorganization of the employment services on a tripartite and decentralized basis and recalls that it requested the Government in its previous observation to state the extent to which the quantitative objectives set for the employment services for the placement in employment of categories of workers who are particularly affected by unemployment have been achieved.
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> 3. With reference to its previous comments, the Committee regrets that the report does not contain the information called for by the report form on the principal measures adopted in such fields as investment policy; fiscal and monetary policies; trade policy; and prices, incomes and wages policies, with a view to promoting full, productive and freely chosen employment. It recalls in this respect that an "active" employment policy in the sense set out in the Convention is not confined to the adoption of measures to intervene on the labour market, but must also be pursued "as a major goal", "within the framework of a coordinated economic and social policy". The Committee hopes that the next report will contain the necessary information.

New Zealand (ratification: 1965)

1. The Committee notes the full and detailed report provided by the Government for the period ending June 1994, in which it transmits the comments of the New Zealand Employers' Federation and the New Zealand Council of Trade Unions (NZCTU), as well as the Government's observations on these comments. It also notes the discussion at the Conference Committee at the 80th Session of the Conference (June 1993).

2. The Committee notes that the strong growth in economic activity during the reporting period has been accompanied by an increase in total employment (of 5 per

cent), a halt in the growth of unemployment, followed by a decrease in the unemployment rate, which fell from 9.9 per cent in June 1992 to 9.5 per cent in March 1994. The Government notes that the unemployment rate is thus getting back to the average level for OECD countries (8.5 per cent in 1994), while the NZCTU emphasizes that it continues to be higher than the OECD average, whereas it was traditionally lower in the past. The information supplied shows that the decline in unemployment has benefited the Maoris and the Polynesian Pacific Island populations, who are however still affected by an unemployment rate of over 20 per cent. It also shows that the decline in unemployment has been about twice as rapid for men as for women. The Government states that it is concerned by the persistence of a high level of long-term unemployment (around 30 per cent of total unemployment) and of very long-term unemployment (over two years).

3. The Government considers that the positive results achieved during the reporting period in respect of employment confirm the soundness of its policy to achieve full employment through economic growth and the development of a skilled and adaptable workforce. It states that its priority over the next five years is to maintain a high rate of growth (between 3.5 and 5 per cent), which should result in the creation of between 25,000 and 30,000 new jobs. In these conditions, taking into account the forecast increase in activity rates, the Government estimates that the unemployment rate should fall to 7 or 8 per cent by 1999. However, the NZCTU considers that the decline in the level of unemployment is largely cyclical in nature and is a result of the improvement in the terms of international trade and the decline in interest rates, and that it cannot be sustainable in the absence of an active employment policy. According to the NZCTU, the Government is confining itself to pursuing a policy of deregulation and disinflation which it presumes will result in the growth of the economy and employment. The NZCTU also alleges that the existence of unemployment is being used in the context of a monetarist policy as a means of securing price stability. In contrast, the Government believes that overcoming inflation is an indispensable prerequisite for healthy and sustainable growth of the economy and employment, even if the monetary policy adopted for this purpose may have been associated initially with a temporary negative effect on employment. Furthermore, the Committee notes from the report of the Prime Ministerial Task Force on Employment, which reported in 1994, that the problem of unemployment cannot be resolved only by economic growth.

4. The NZCTU also considers that the apparent reduction in the level of unemployment has only been achieved at the price of a deterioration in the quality of employment and emphasizes that the adoption of the Employment Contracts Act of 1991 has encouraged the increase of precarious jobs and led to the greater proportion of total employment being accounted for by part-time work. In the opinion of the NZCTU, there is also a contradiction between the stated objective of the Government to promote the development of workers' skills through further training and the measures taken, which have had the effect of restricting their career prospects in stable employment. The Government recalls that the 1991 Act is an essential component of its strategy of growth, employment and social cohesion and its implementation appears to have been a major contributor to the growth of employment, without having led to a significant change in conditions of employment. This is also the opinion of the New Zealand Employers' Federation, which welcomes the flexibility of the labour market introduced by the Act. With reference to its previous observation and the discussion during the Conference Committee, the Committee of Experts notes the persistence of a diversity of views between the social partners on the effects of the reform of the labour market. It emphasizes in this respect that, in pursuit of the objective of full, productive and freely

chosen employment, it is important to ensure that the costs and advantages of structural reforms are equitably distributed.

5. The Committee notes that the description of labour market measures, such as wage subsidies and training and employment programmes, is supported where possible by statistics showing the increase in the number of beneficiaries and the contribution made by these measures to improving their employability. The Committee notes in particular the introduction in 1994 of the new Job Action Programme aimed specifically at the very long-term unemployed. It would be grateful if the Government would continue to supply detailed information on the results of these programmes, and on any new measures which may have been taken or are envisaged to improve the coordination of education and training policies with prospective employment opportunities.

6. With regard to *Article 3 of the Convention*, which provides for the consultation of the representatives of the persons affected by the measures to be taken in respect of employment policy, the Government stated to the Conference Committee that effect was given to the Article through the Enterprise Council, which is an informal advisory body convened by the Prime Minister, composed of members representing various interests chosen in their individual capacity, as well as through the consultation of employers' and workers' organizations in the context of the various employment and training programmes. The Worker members emphasized the difference between the mere possibility of some occasional meetings and the authentic consultation required by the Convention, which presupposes the existence of a formal procedure. The Employer members recalled that these consultations should not only include representatives of employers' and workers' organizations, but also the representatives of other groups affected, such as disadvantaged groups or communities. The Government refers in its report to the establishment of the Prime Ministerial Task Force on Employment, and attaches a report by the Task Force. Composed of 11 members, including leaders of the Employers' Federation and the NZCTU, the Task Force has the role of gathering information, analyses and suggestions from the various sections of the community with a view to submitting employment policy options to the Government. The Committee notes that the NZCTU considers that this Task Force is insufficient to ensure real consultation with the representatives of employers and workers. The Committee requests the Government to continue supplying information on the activities of the above Task Force and the effect given to its proposals. The Committee, whilst noting the major differences of analysis existing between the Government, the employers and the trade unions, considers that it is important under the terms of the Convention to strengthen direct consultations between the Government and the representative bodies of employers and workers.

Papua New Guinea (ratification: 1976)

The Committee notes with regret that for the seventh year in succession the Government's report has not been received. It hopes that a report will be supplied for comments by the Committee at its next session and that it will contain full information in reply to the questions set out in the report form, taking into account its previous comments.

Peru (ratification: 1967)

1. The Committee notes the Government's report for the period ending June 1994 and the information provided in writing and orally by the Government to the Conference Committee on the Application of Standards at the June 1994 Session of the Conference,

as well as the subsequent discussion. However, it notes that the report is mainly confined to repeating the information supplied to the Conference and that it does not provide the "relevant responses" promised by the Government representative.

2. The Government refers in its report to a statement by the Minister of Labour that the increased production capacity of the agricultural, mining and manufacturing sectors had resulted in the creation of 180,000 jobs during the first half of 1994 (the objective was 500,000 by end of 1994). According to the information available to the ILO, the jobs that have been created concern mainly unskilled workers in the informal sector. They offer fewer opportunities to skilled workers seeking to find work in the modern sectors of the economy and are generally in small enterprises in which social protection is limited (particularly with regard to trade union rights and social security). Measures to balance the budget and the privatizations carried out reduced the budget deficit to 1.4 per cent of GDP in 1993, compared with 4.5 per cent in 1990, and explain why all the jobs created in the modern sectors of the economy during the reporting period were in the private sector. However, despite the economic recovery, the urban unemployment rate has remained at around 10 per cent due to the difference between the changing rates of the supply and demand for labour. Moreover, it would appear to be the rapid growth of the informal sector (in which over 40 per cent of the active population works) that has made it possible to avoid a substantial increase in unemployment.

3. The Government also provided the Conference Committee with information on the various programmes undertaken to promote the vocational training of young persons, including through pre-vocational internship programmes, self-employment and microenterprises. The Government has endeavoured to implement a programme to develop public employment services and vocational training at the regional level, although it is still encountering difficulties in this respect. The Committee also notes the objections raised during the discussion in the Conference Committee against the measures which have been taken, particularly with regard to young persons, within the context of the Employment Promotion Act; it was emphasized that this system did not create jobs, but allowed enterprises to downgrade workers to subsidiary jobs, without employment stability, at a lower cost and without any protection.

4. The Committee notes that the achievement of the objectives of the Convention, namely the promotion of full, productive and freely chosen employment, continues to give rise to particular difficulties. With reference to its previous observation, it recalls the importance that it attaches to promoting a fair distribution of the social costs and benefits of structural adjustment in order to ensure the effectiveness of employment policy, and notes that this was also emphasized by the Conference Committee. It also stresses the idea expressed at the Conference that the objectives of full employment and social protection need not be contradictory. The Committee hopes that the next report will contain the information required under the report form on the results obtained in terms of employment by overall and sectoral development policies (investment policy; fiscal and monetary policies; trade policy; prices, incomes and wages policies). Furthermore, it trusts that the Government will be in a position to supply further information on the various employment promotion programmes undertaken, with an indication of the extent to which they have made it possible for the principal categories of workers concerned, such as women, young people seeking their first job and informal sector workers, to find lasting employment. Please also indicate whether the objectives of government plans to promote employment in metropolitan Lima and the other regions of the country have been or are being achieved.

5. The Committee notes the statement by the Minister of Labour transmitted with the Government's report relating to the establishment of a National Commission on

Employment and Wage Statistics, which should receive the technical support of the ILO. Furthermore, measures were announced at the Conference to extend the geographical scope of household surveys. The Committee hopes that the Government will be able to provide more detailed information in future reports on the situation, level and trends of employment, unemployment and underemployment for the whole of the country and all sectors. It would also be grateful if the Government would indicate the action taken in relation to any ILO technical cooperation in these fields, especially with a view to facilitating the application of the Convention.

6. The Committee notes the Government's indication that the opinion of the persons concerned is sought when evaluating programmes undertaken in the context of employment policy and proposing necessary measures. As emphasized by the Conference Committee, the Committee of Experts wishes to recall the crucial importance of the consultation of national employers' and workers' organizations envisaged in *Article 3 of the Convention* in order to deal with economic and social problems, as well as for the declaration and application, "as a major goal", of an active employment policy, "within the framework of a coordinated economic and social policy". With reference to its previous comments and the concern expressed in this respect by several workers' organizations, as well as the Committee's observation this year on the Employment Service Convention, 1948 (No. 88), the Committee would be grateful if the Government would provide any relevant information on the consultations held with the representatives of all the persons affected, such as the representatives of employers' and workers' organizations and the representatives of workers in the rural and informal sectors, with a view to giving full effect to this essential provision of the Convention, with an indication of the manner in which their experience and views have been taken into account in order to obtain their full collaboration in formulating employment policy measures and securing support for these measures.

Spain (ratification: 1970)

1. The Committee notes the Government's detailed report for the period ending June 1994, with which it transmits the comments of the General Union of Workers (UGT) on the application of the Convention and its response to these comments. The Committee once again wishes to express its gratitude to the Government which, by providing precise and reasoned responses to most of the points raised in its previous observation, shows the importance that it attaches to the continuation of a well-founded dialogue with the supervisory bodies concerning the application of this Convention.

2. The Government provides a detailed analysis in its report of developments in the active population, employment and unemployment in 1992 and 1993. The deterioration in the employment situation, which was appreciable during the previous period, has worsened. With a decline of 1.9 per cent in 1992 and 4.3 per cent in 1993, the reduction in the volume of employment was sharp, particularly in industry. The unemployment rate rose from 16.1 per cent in 1991 to 18.1 per cent in 1992 and reached the unprecedented level of 22.7 per cent in 1993 (it is as high as 40 to 50 per cent in the 16 to 24 age category). Despite the recovery in 1994, the OECD forecasts that the unemployment rate will continue to rise to over 24 per cent. Furthermore, the rise in unemployment has further accentuated the substantial regional differences in employment levels. The UGT emphasizes the precariousness of the labour market as a result of the increased incidence of temporary employment, which accounts for around one-third of total employment, as shown by the statistics provided in the report.

3. The Government describes the two priorities of its employment policy, namely the promotion of recruitment under contracts of indeterminate duration and the integration of young persons into the labour market. It states that employment promotion contracts, which made it possible to recruit workers on fixed-term contracts without the obligation to prove the temporary nature of the work, have been abolished, except for categories of unemployed persons with particular difficulties, such as workers aged over 45, persons with disabilities and the long-term unemployed. The transformation of temporary contracts without limit of time continues to be promoted by the incentives that the Government described in its previous report, which have been extended to cover part-time work, which is being encouraged as a means of sharing existing employment. The integration of young persons is being promoted through practical trainee contracts and apprenticeship contracts, for which incentives are also available to promote their transformation into permanent contracts. In the context of active employment promotion measures, the Government also refers to the subsidy for the recruitment of unemployed persons for work of general interest in the service of local communities and public bodies. Furthermore, the measures taken under the National Vocational Training and Integration Plan (FIP) are now directed solely towards unemployed workers.

4. The UGT emphasizes the harmful consequences of precariousness on the rights and skills of workers and considers that the employment policy measures adopted over recent years have not led to any reduction in the rotation of temporary workers, which has been identified by the Government as one of the structural problems of the national economy. The UGT states that it is particularly concerned by the introduction of the apprenticeship contract, which permits recruitment at a wage that is lower than the inter-occupational minimum wage and deprives young workers of social protection in the event of sickness or unemployment. It is also concerned at the new temporary work enterprise regulations, which encourage the development of precarious forms of employment, as well as at the introduction of individual or collective terminations of employment for economic reasons, which empower employers to turn any permanent contract into a temporary contract at their discretion. The UGT expresses more general concern at the deregulation and flexibility measures which only leave workers with the option of defending their rights through the courts. In its reply, the Government states that the level of remuneration of young persons covered by practical trainee or apprenticeship contracts is determined so as to compensate the training provided by the employer through a reduction in wage costs. It states that temporary work enterprises are not absolved from the general requirement to justify the use of fixed-term contracts.

5. The Committee notes the Government's commitment to promoting employment through contracts without limit of time, even though the measures implemented for this purpose do not appear on their own to have prevented the continuation of the worrying rise in unemployment and the decline in employment security. It notes in this respect that the Government recognizes that employment promotion contracts ceased to produce the desired results when the economy went into recession. The Committee is also bound to recall that it is the responsibility of the Government to ensure that employment promotion measures are not diverted from their objective of achieving the lasting integration of beneficiaries into employment. In particular, it requests the Government to describe the training content of the various integration contracts for young persons and to state whether guarantees are established to ensure that the training is provided. The Committee also notes that the current reform of labour law is intended to promote the creation of employment through the introduction of greater flexibility on the labour market. The Committee, which is not unaware that certain excessive rigidities can be unfavourable to employment, nevertheless emphasizes that structural reforms of the

labour market should not have the effect of unduly reducing the protection of workers, and that the expected costs and advantages should be shared equitably by the parties concerned. Furthermore, the Committee is of the opinion, as it has noted in its *General Survey on Termination of Employment*, that the appropriate minimum level of protection provided by labour law is not only reconcilable with the promotion of employment, but encourages it.

6. The Committee notes the Government's detailed explanations on the issue of the definition of suitable employment, the refusal of which may result in loss of entitlement to unemployment benefit. It will not fail to take this information into account when examining the application of the Unemployment Provision Convention, 1934 (No. 44).

7. With regard to the effect given to the provisions of *Article 3 of the Convention*, the Government refers to consultations with the Economic and Social Council, to which the draft reform of the labour market was submitted for its opinion. The Committee would be grateful if the Government would continue to supply information on any new consultations held with the representatives of the persons affected, and in particular the representatives of employers and workers, concerning employment policy, with an indication of the opinions expressed and the manner in which they were taken into account. It recalls in this respect that the consultations required under this fundamental provision of the Convention should relate to all the aspects of economic policy that affect employment. The Committee also notes that, according to the UGT, all the trade union organizations expressed their firm opposition to the recent labour market reform measures.

8. More generally, the UGT regrets, in the context of very high unemployment and increased precariousness, the absence of a policy for recovery and of industrial and training policies which would contribute to renewing the industrial fabric and preparing young persons for occupations of which society has real need. With reference to its previous observation, the Committee notes in this respect that the Government's report does not contain the information requested by the report form in order to enable it to evaluate the manner in which the employment policy measures are adopted "within the framework of a coordinated economic and social policy" (*Article 2*). The Committee recalls the employment policy, in the meaning of the Convention, is not limited to labour market policy and it requests the Government to specify in its next report how the measures adopted in such fields as fiscal and monetary policies, prices, incomes and wages policies, investment policy, education and training policies, as well as policies designed to ensure balanced regional development, contribute to the achievement of the objectives set out in the Convention. The Committee notes from the conclusions of the latest OECD study that unemployment is the most serious economic problem in Spain and it hopes that in its future reports the Government will show the success with which it is pursuing ",as a major goal, an active policy designed to promote full, productive and freely chosen employment" (*Article 1*).

Turkey (ratification: 1977)

The Committee notes a communication from the Confederation of Turkish Trade Unions (TURK-IS) dated 4 July 1994, in which the above organization alleges that the Government is not pursuing an active policy designed to promote full, productive and freely chosen employment, and that it has embarked upon a systematic programme of retrenchment in the public sector. The Committee notes that the Government has not taken up the invitation to transmit its own observations on the matters raised in the above communication and notes that the report due from the Government for the period ending

June 1994 has not been received. The Committee trusts that a report will be submitted for examination at its next session and that it will contain full information in reply to its previous observation, which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1992 which contains detailed information in answer to its previous comments and includes the observations made by the Turkish Confederation of Employer Associations (TISK).
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> 2. In its report, the Government refers to factors and circumstances which adversely affected employment during the period in question, particularly the consequences of the Gulf crisis which led to the loss of approximately 100,000 jobs and the return to Turkey of 25,000 migrant workers employed in the region. In total, civilian employment dropped by 2.7 per cent between 1990 and 1991. The Committee also notes that the strong recovery in economic growth in 1992 (over 5 per cent) has not reduced the rate of registered unemployment, estimated to be approximately 8 per cent, and that the underemployment rate has attained roughly the same percentage. Certain major structural features of the employment market are still worrying, such as the continued rapid growth of the active population, the continued drop in the average activity rate, the low activity rate of women, particularly in urban areas, the particularly high incidence of unemployment among young people under 30 years of age who account for more than two-thirds of the total number of unemployed, and the large proportion of low-productivity jobs in the urban informal sector.
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> 3. The Government sets out the main lines of its economic policy in 1993: combating inflation, reducing public sector deficits, strengthening business competitiveness and improving income distribution. In this connection, the report mentions plans for tax reforms and the privatization of state economic enterprises. The TISK considers that combating structural unemployment means reducing fiscal and parafiscal levies and the level of social contributions, and lowering wage costs. The Committee notes that the programme for privatizing state economic enterprises should result in the abolition of 230,000 jobs over a five year period. It asks the Government to indicate the nature of the accompanying measures referred to which are to ensure that redundant workers are redeployed in productive jobs. The Committee would also be grateful if the Government would give detailed information on the projects for the development of southern Anatolia and the expected incidence of these projects on employment. More generally, the Committee would appreciate more detailed information on the employment objectives and the priority given to them, and on how it is ensured that measures in areas such as monetary, budgetary and fiscal policies, prices, incomes and wages policies and regional development policies contribute effectively to the pursuit of the objective of full, productive and freely chosen employment "within the framework of a coordinated economic and social policy", in accordance with *Articles 1 and 2 of the Convention*.
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> 4. The Committee notes the information on labour market policy measures provided in response to its direct request. It notes that the Supreme Coordination Board for Employment Development is the interministerial body that decides on such measures and that the State Employment Agency is responsible for implementing them. It notes that the latter is being reorganized and modernized, inter alia, in the context of the World Bank project on employment and training. It asks the Government to indicate in its next report the progress made in this area. Furthermore, the Committee hopes that the setting up, with ILO assistance, of a labour market information system (IPES) will shortly give the Government access to the reliable and up-to-date statistics that are essential to the choice and implementation of employment policies. It would again be grateful if the Government would indicate the latest developments with regard to the planned legislation on unemployment insurance and employment protection.
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> 5. Lastly, the Committee observes that the Government's report does not state whether any consultations were held with the social partners during the reporting period (except as regards the planned legislation mentioned above) on employment policies. It recalls that under *Article 3* of the Convention representatives of all persons affected by the measures to be taken must be consulted "with a view to taking fully into account their experience and views and

securing their full cooperation in formulating and enlisting support for such policies". The Committee points out that such consultations should include, in addition to representatives of employers and workers, representatives of other important sectors of the active population such as the rural and informal sectors. It asks the Government to provide full information in its next report on the effect given to this essential provision of the Convention. The Committee also refers to its comments on the application of the Employment Service Convention (No. 88), 1948, where it notes the observations made by the Confederation of Turkish Trade Unions (TURK-IS), alleging that employers' and workers' organizations have not been consulted on the organization and running of the employment service and, more generally, that there is no active employment policy.

Uruguay (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. The Committee notes the Government's report for the period ending June 1992. The Government indicates that employment policy is considered as a result of the achievement of the objectives of the economic programme, employment promotion being closely linked to the success of economic measures implemented. With the implementation as of 1990 of the structural adjustment programme, the Government's policy has given priority to re-establishing the major macro-economic balances - the objective of monetary and budgetary policies was to reduce inflation and contain the budget deficit. Substantial results have been attained in these areas. However, despite product growth (7 per cent in 1992), overall employment grew only slightly and the unemployment rate fluctuated around 9 per cent (these data concern the urban labour market). The information supplied by the Regional Employment Programme for Latin America and the Caribbean (PREALC) shows that unemployment is still affecting one worker out of five, as it did at the end of the past decade, and that women and young people are the hardest hit by unemployment. The youth unemployment rate is triple the average and PREALC considers that it probably contributes to the emigration of skilled young people. The Government recognizes that "structural adjustment, which the Uruguayan economy inevitably has to undergo, has caused an involuntary and temporary increase in unemployment and underemployment, in both absolute and relative terms". As to the effects on wages and incomes, the Committee notes that, owing to a policy to abolish the indexation of prices and wages, real wages increased substantially in the private sector but fell in the public sector and that, in 1992, the minimum wage was equivalent to only 60 per cent of the 1980 real wage.

2. In its 1992 observation, the Committee referred to Part IX of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) and pointed out that it was necessary to share out fairly the social costs and benefits of structural adjustment. In view of the difficulties that the Government still seems to be experiencing in promoting the objectives of the Convention, particularly in "solving the unemployment and underemployment problem", the Committee trusts that it will take the necessary measures to determine and apply, "as an essential objective", an "active" employment policy, "within the framework of a coordinated economic and social policy" (*Articles 1 and 2 of the Convention*). The Committee would be grateful if in its next report the Government would supply relevant information on the measures taken in the different areas referred to in the report form, together with particulars of the situation, level and trends in employment, underemployment and unemployment in the country as a whole, including in respect of women and young people. It would also be grateful if the Government would describe the procedures adopted to ensure that their effects on employment are taken into consideration in the formulation and implementation of macroeconomic policies.

3. The Committee notes the information concerning the agreements concluded by the Wages Council which, in the Government's view, are an outstanding example of long-term

tripartite agreements comprising pre-established criteria for wage adjustments in the context of stability of employment. The Committee would be grateful if, in its next report, the Government would provide information on consultations held on employment policy; such consultations must, under *Article 3* of the Convention, aim to ensure that full account is taken, in both formulating and implementing employment policy, of the experience and opinion of the representatives of those affected (representatives of employers and workers organizations, and also representatives of other sectors of the active population such as the rural and informal sectors).

4. In a direct request the Committee asks for information on other issues concerning the application of the Convention (impact of the labour legislation on the labour market, special measures for the categories of workers most affected by unemployment and underemployment, coordination of education and training policies with employment policy, ILO technical cooperation).

Venezuela (ratification: 1982)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments, the Committee notes the detailed information contained in the Government's report. The Government refers to the results achieved through the structural adjustment measures which have been applied since 1989 and have made it possible to re-establish a macroeconomic balance and attain sustained growth of production. The Government states in its report that a high proportion of workers in the informal sector of the economy do not enjoy the desirable working conditions of stability and an adequate income, that the unemployment rate remains at a high level, and that there is pressure for greater flexibility and deregulation of the labour market. The Committee notes that the Organic Labour Act of 1990 states that everybody has the right to work (section 24) and that the State shall make every effort to create and encourage conditions favourable to raising the level of employment to the greatest possible extent (section 25). As it has been doing for several years, the Committee proposes to continue the dialogue by directly requesting the Government to supply information on various aspects of the impact on employment of the measures adopted under structural adjustment programmes, the revision of these measures within the context of a coordinated social and economic policy, and the consultations which have been held with representatives of the persons affected concerning the employment policy *(Articles 1, 2 and 3 of the Convention).*

Zambia (ratification: 1979)

1. The Committee notes the Government's report for the period ending June 1994, which contains general information in answer to its previous observation. The Government states in the report that it is fully committed to ensuring the right to work by means of a strategy seeking first to stabilize the economy and then to stimulate growth. However, it recognizes that the economic recovery programme will cause further hardship for the people in the short term. The Government considers that this is nonetheless unavoidable and that bold measures will have to be taken in order to ensure a better future. The report contains indications, in this connection, of the direction followed by macroeconomic policy during the period: priority was given to bringing down inflation and lifting exchange controls so as to promote foreign investment and exports. The Committee notes, however, that the Government does not indicate to what extent the economic growth objectives (a rate of 4 per cent was set, in real terms, for GDP in 1994) have been or are being attained. The report also refers, in the context of structural reforms, to the 1991 Investment Act and the 1992 Privatization Act, but does not indicate how their implementation has affected production and employment. Although

the Government refers to programmes for job creation, combating unemployment among young people, training for employment and promoting small enterprises and self-employment, it provides no information in the report on the nature and scope of these programmes and their objectives, nor does it give any evaluation of the results of these initiatives.

2. The Committee must express concern at the Government's statement that its stabilization policy brings adverse repercussions for the population, without specifying exactly what measures have been taken to soften their impact on those most affected. The World Bank considers that the initial effects of structural adjustment are an increase in unemployment and a drop in living standards among the poorer strata of the population. For this reason, the Committee asks the Government to indicate in its next report the measures taken to evaluate the effect on employment of adjustment policies and to mitigate their social repercussions so as to ensure that the social costs and benefits are fairly distributed. It hopes that the next report will provide further information showing the pursuit "as a major goal" of an active policy designed to promote full, productive and freely chosen employment *(Article 1 of the Convention)*, together with a full description of the measures taken for this purpose, "within the framework of a coordinated economic and social policy", as well as to collect and analyse statistical and other data concerning the active population, unemployment and underemployment *(Article 2)*. The Committee would be grateful if the Government would provide available information on the situation and trends in employment, with particular reference to the size and role of the informal sector and the distribution of jobs between the public and private sectors.

3. With regard to the effect given to the provisions of *Article 3* of the Convention, the Government stresses its attachment to freedom of association and collective bargaining and indicates that consultations are held through the National Economic Advisory Council and the Tripartite Consultative Labour Council set up by the Industrial and Labour Relations Act, No. 27 of 1993. The Committee notes that under section 83 of the above Act, the Tripartite Consultative Labour Council, on which employers' and workers' organizations are represented, is competent to deal with other matters concerning the development and utilization of manpower, as well as any other matters submitted to it by the Government. The Committee recalls that consultations with representatives of the persons affected by the employment policies provided for in the Convention should aim at securing their cooperation in formulating and enlisting support for those policies, and should cover all aspects of economic policy which affect employment. Furthermore, given their importance in the working population, workers in the rural and informal sectors should be associated with these consultations. The Committee cannot emphasize sufficiently the importance of this provision of the Convention, and would be grateful if the Government would state the manner in which all representatives of all the persons affected by the measures to be taken are consulted on employment policies, "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies".

4. Lastly, the Committee asks the Government to indicate the action taken as a result of ILO technical cooperation projects concerning employment (*Part V of the report form*).

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belarus, Cameroon, Comoros, Cyprus, Djibouti, Guatemala, Honduras,*

Iceland, Jamaica, Libyan Arab Jamahiriya, Madagascar, Mongolia, Nicaragua, Panama, Papua New Guinea, Romania, Russian Federation, Senegal, Suriname, Thailand, Uruguay, Venezuela.

Convention No. 123: Minimum Age (Underground Work), 1965

A request regarding certain points is being addressed directly to *Thailand*.

Information supplied by *Malaysia* in answer to a direct request has been noted by the Committee.

Convention No. 124: Medical Examination of Young Persons (Underground Work), 1965

Requests regarding certain points are being addressed directly to the following States: *Bolivia, Gabon, Guatemala, Madagascar, Tunisia, Uganda.*

Information supplied by *Malta* and *Spain* in answer to direct requests has been noted by the Committee.

Convention No. 125: Fishermen's Competency Certificates, 1966

Requests regarding certain points are being addressed directly to the following States: *Panama, Senegal.*

Convention No. 126: Accommodation of Crews (Fishermen), 1966

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied in the Government's report in reply to its previous comments and, in particular, that the new draft text to regulate labour at sea and on inland waterways which, according to the report on the application of Convention No. 73, has been adopted by the Legislative Assembly in plenary sitting, contains provisions relating to inshore fishing and coastal vessels which take up in part the provisions of Decision No. 603-04-118-ALCN of 1988 and Decision No. 614-257-ALCN of 1984, thereby giving effect to the Convention. The Committee would be grateful if the Government would supply a copy of the final text which was adopted.
>
> *Part IV of the Convention.* Would the Government please indicate any consultations held in relation to the application of the Convention to existing fishing vessels.
>
> *Point V of the report form.* See comments on Convention No. 92.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is asked to report in detail for 1996.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Greece, United Kingdom.*

Convention No. 127: Maximum Weight, 1967

Algeria (ratification: 1969)

1. *Articles 3 and 7, paragraphs 1 and 2, of the Convention.* Further to its previous comments noting the absence of legislation limiting the weight of loads to be manually transported by adult males, the Committee notes with satisfaction that article 26 of Executive Decree No. 91-05 of 19 January 1991, concerning the general protective provisions applying in the field of safety and health in the work environment, sets the maximum weight of loads to be manually transported by adult males at 50 kg, and the maximum weight of loads to be transported manually by women and young workers at 25 kg.

In this connection, the Committee would, however, refer the Government to the ILO publication "Maximum weights in load lifting and carrying" (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 15 kg is the limit, recommended from an ergonomic point of view, of the admissible load for occasional lifting and carrying for a woman aged between 19 and 45 years. The Committee hopes that the Government will keep the matter under review so as to further limit the assignment of women workers to the manual transport of light loads, not exceeding, as much as possible, 15 kg, and that it will indicate the measures taken or envisaged to this end.

2. *Article 6 of the Convention.* The Committee notes from the Government's report that modernization is taking place in the country and that the mechanization of operations has improved conditions of work and reduced the fatigue and risks encountered by workers. The Committee hopes that the Government will supply more detailed information on the technical devices used that limit and facilitate the manual transport of loads.

Chile (ratification: 1972)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observations on the following matters:

> The Committee has taken note of the information provided by the Government to the effect that a copy of its observations has been transmitted to the special committee that is studying the draft General Regulations of the Labour Code.
>
> *Article 3 of the Convention.* The Committee noted that Circular No. 30 of 4 December 1985, from the Director of Labour to the Regional Directors of Labour and the Provincial and Communal Labour Inspectors, lays down instructions on the maximum weight that may be manually transported by workers. This Circular gives effect to *Articles 3, 4 and 7, paragraph 2,* of the Convention by reducing the maximum weight of a load permitted to be manually transported to 55 kg, which is the weight recommended in Recommendation No. 128, and by specifying that the maximum weight of loads for women and young workers shall be substantially less than that permitted for adult male workers.
>
> The Committee asked the Government to indicate:
>
> - whether sections 57 and 252 of Presidential Decree No. 655 of 7 March 1941 laying down the general regulations on occupational safety and health, which fix a maximum weight of 80 to 86 kg have been repealed and, if so, by virtue of which provisions; and
> - whether the Circular has been published and distributed to employers, workers, courts and all other persons concerned.
>
> *Article 6.* The Committee noted that section 8 of Circular No. 30 prescribes that mechanical devices shall be used for the transport of loads weighing over 55 kg. While this

represents an improvement over the former weight limit of 80 kg for the use of such devices to be required, the Committee points out that *Article 6* of the Convention requires suitable technical devices to be used as much as possible, not only for loads over the 55 kg weight limit. Please indicate the measures taken or envisaged in order to apply fully this provision of the Convention.

Article 7, paragraph 1. The Committee noted that Circular No. 30 does not provide that the assignment of women and young workers to manual transport of loads other than light loads shall be limited. The Committee again expresses the hope that the Government will take the necessary measures to ensure full compliance with this provision of the Convention.

Article 7, paragraph 2. The Committee noted that section 4 of Circular No. 30 prescribes that the maximum weight of loads for women and young workers shall be substantially less than that permitted for adult male workers, without specifying maximum limits. Please indicate whether weight limits have been prescribed or are envisaged in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala (ratification: 1984)

The Committee notes the information supplied by the Government in its latest report.

Articles 3, 7 and 8 of the Convention. In earlier comments, the Committee noted that section 202 of the Labour Code provides for the promulgation of regulations to specify the admissible weight of sacks to be transported or loaded by a single person, with due consideration being given to factors such as the age, sex and physical condition of the workers. It also noted that section 148(a) of the Labour Code provides for the promulgation of regulations to specify the unhealthy or dangerous jobs where the employment of women and young workers should be prohibited. The Committee expressed the hope that these regulations would be adopted in the near future so that the admissible weight of loads to be transported or loaded by a single person would be specified in order to give effect to Article 3 of the Convention and that the employment of women and young workers in the manual transport of loads would be limited in accordance with Article 7 of the Convention.

In its report for the period 1988-90, the Government indicated that the Occupational Health and Safety Section of the Guatemalan Social Security Institute had drafted an Agreement concerning the maximum load that may be carried by workers, which would be the subject of consultations with the most representative workers' and employers' organizations. In its latest report, the Government indicates that in practice, it is recommended that the weight be above 100 lb. only if and when the physical strength of the worker so permits, but that the draft Agreement is still being studied with a view to its approval.

In this connection, the Committee again draws attention to paragraph 14 of the Maximum Weight Recommendation, 1967 (No. 128) which provides that where the maximum permissible weight which may be transported by one adult male worker is more than 55 kg, measures should be taken as speedily as possible to reduce it to that level. It also refers to the publication "Maximum weights in load lifting and carrying" published by the International Labour Office as No. 59 in the series "Occupational safety and health", which contains information on differentiated weight limits for lifting and carrying loads occasionally or more frequently, for men, women and young workers.

The Committee hopes that the necessary measures will soon be taken through regulations under the Labour Code, the Agreement under consideration or any other method consistent with national conditions, to ensure that no worker may engage in the manual transport of a load which by its weight is likely to jeopardize his health and safety, and that the assignment of women and young workers to manual transport of loads shall be limited to loads of a substantially lesser maximum weight.

Article 5. The Committee notes the information supplied by the Government that the Institute of Social Security, through the School for Training in Occupational Health, is training employers and workers and that it also issues posters with recommendations which are posted at worksites. It requests the Government to supply further details on training programmes being conducted for workers, prior to their assignment to work involving manual transport of loads and to forward specimen copies of relevant posters.

Madagascar (ratification: 1971)

The Committee notes with regret that for the fifth year in succession no report has been received from the Government. It also notes the Government representative's statement at the Conference Committee of 1992 that it was not possible to communicate information on the application of the Convention. Noting the concerns expressed by the Conference Committee concerning the lack of information on the application of the Convention and the importance placed by the Committee on this question, the Committee must repeat its previous observation on the following matters:

> In the comments that it has been making for a number of years, the Committee notes that measures have not yet been taken to limit the weight of loads that may be transported by adult male workers.
>
> Even before the adoption of the Labour Code in 1975, the Government announced in its reports that texts to apply the Code would include a text to give effect to this Convention. In a report received in 1983, the Government confirmed this undertaking, although it pointed out that factories manufacturing jute and plastic sacks for rice, flour, etc., now respected the standard of *50 kg*, and that the old sacks of 70 or 75 kg were disappearing since they were no longer being manufactured in Madagascar. In its report for the period ending 30 June 1986, the Government indicated that the above information concerning the current standardization of sacks manufactured locally remained valid and that this practice would be laid down in regulations.
>
> However, the Government's last report, which was received in 1989, and the two letters signed by the Minister of the Civil Service, Labour and Labour Legislation in 1988, which were attached to the report, show that, in practice, factories, traders, transporters and farmers use sacks of 90 kg, 75 kg or 70 kg, which are generally manufactured locally, even though *certain enterprises which are the principle manufacturers of these articles currently respect the standard of 50 kg.* Consequently, the use of sacks that are in conformity with the requirements of international standards would, in the opinion of the Government, give rise to problems at the level of manufacture and consumption and would create difficulties as regards production costs and prices for manufacturers, users, producers and farmers. In a letter to the social partners in November 1988, the Minister invited them to recommend production units, "in order to avoid the harmful effects of the immediate application of the Convention in national law and so as not to be in opposition with the country's undertakings on the international level", to manufacture, by stages, *sacks of 55 kg or 65 kg* and to launch them progressively, as they are produced, onto the market.
>
> The Committee recalls that by virtue of *Article 3 of the Convention*, no worker shall be required or permitted to engage in the manual transport of a load which, by reason of its weight, is likely to jeopardize his health or safety. This rule does not provide for any exceptions on the grounds of production costs or prices or for any other reason. It is more than 20 years since Madagascar has ratified the Convention. For several years, the Government has been undertaking to lay down in regulations the current practice adopted by the principle manufacturers of sacks which respect the standard of 50 kg. In these

circumstances, its letter recommending the production of sacks of up to 65 kg constitutes a serious retrogression. The Committee trusts that the Government will re-examine its position and that it will indicate in the near future the measures that have been taken to ensure that the Convention is applied to adult male workers.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Tunisia (ratification: 1970)

The Committee notes the information supplied by the Government in response to its previous comments.

Article 3 of the Convention. In its 1994 observation on the Convention, the Committee noted that the established maximum permissible weight to be carried by men, which under section 1 of the Order of 5 May 1988, is set at 100 kg, considerably exceeds the recommended maximum of 55 kg. The Committee noted that regular manual transport of such loads is likely to jeopardize the health or safety of the workers, and requested the Government to re-examine the said provision in the light of the Convention and Recommendation No. 128. The Government, in its latest report, indicates that a commission will be established with the various parties concerned to examine the Committee's comments concerning the application of this Article of the Convention and that it will communicate to the Office the results of the commission's work in its next report. The Committee hopes that in this connection, account will be taken also of the information gathered by the medical services in non-agricultural enterprises and in ports in monitoring employees' health and physical aptitude — information requested by the Committee in its previous observation, but not communicated by the Government — as well as the possibilities created by the increasing mechanization of the transport of loads, referred to by the Government in its report, reducing the current limit of 100 kg maximum weight to be carried by one worker. The Committee hopes that the commission, referred to by the Government, will be able to conclude its work in the near future and that the Government will supply detailed information on the work of the commission and on the manner in which the most representative organizations of employers and workers have been or are being consulted on the matter, as well as on the measures taken or proposed to be taken to reduce the maximum permissible weight to be carried by one worker to a level that is not likely to jeopardize his health or safety.

[The Government is asked to report in detail in 1997.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Tunisia, Venezuela*.

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Finland (ratification: 1976)

The Committee notes the detailed information supplied by the Government in its last report and notes with interest the entry into force of the reform of the pensions scheme, which also covers public sector workers. The Committee notes in particular the existence of early and deferred old-age pensions and partial retirement pensions, for workers in both the public and private sectors, and the invalid's early allowance, established on an individual basis, for 16-64 year-old persons with decreased functional capacity who do not receive a disability pension. The Committee also notes the various amendments to the survivors' benefit scheme (PEL and TEL).

The Committee hopes that these reforms will enable workers engaged in occupations that are arduous or unhealthy to receive old-age benefit before the age of 65 years, in accordance with *Article 15, paragraph 3, of the Convention*, and in the conditions laid down by this instrument, despite the fact that public sector workers in such jobs are no longer entitled to old-age pension before 65 years of age and despite the amendments planned for raising gradually by the year 2002 the minimum age for entitlement to a pension for certain other categories of workers (for example seafarers).

The Committee has also noted the observations presented by the Finnish Employers' Confederation (STK), the Employers' Confederation of Service Industries (LTK), the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Salaried Employees (TVK).

* * *

In addition, a request regarding certain points is being addressed directly to *Finland*.

Convention No. 129: Labour Inspection (Agriculture), 1969

Malawi (ratification: 1971)

Further to its previous comments, the Committee notes the information supplied by the Government in its report. It would be grateful if the Government would provide further clarifications on the following points.

Articles 4 and 19 of the Convention. The Committee notes the Government's explanation that even though section 24 of the Workers' Compensation Act (which Act has not come into operation through the publication of the required notice in the *Gazette* in accordance with its section 1) imposes an obligation on employers to notify the Workers' Compensation Commissioner of the occurrence of serious occupational accidents and diseases to workers; under section 2(a) of the same Act, persons whose employment is of a casual nature are excluded from the application of the Act. The Committee expresses its concern that the Act has not yet entered into operation since its passage in 1990. It also notes that there is no information regarding the new rules and regulations to administer the Act, referred to by the Government in its report of 1992 as providing for inspectors to be involved with on-the-spot inquiry into the causes of occupational diseases and accidents of a serious nature. The Committee trusts the Government will soon be in a position to indicate the coming into force of both the Act and the rules and regulations to administer it. The Committee would also like to draw the Government's attention to the requirements of Article 4 of the Convention that the system of labour inspection in agriculture shall apply to employees or apprentices, however they may be remunerated and whatever the type, form or *duration* of their contract. It expresses the hope that the Government will take the necessary measures to bring the law into conformity with the requirements of this Article of the Convention.

Articles 2, 6, paragraph 1(a), 24 and 27(a) and (e). The Committee would be grateful if the Government would provide information regarding work or employment of young persons in agricultural undertakings, particularly in estate and small-sector tobacco production. The Committee recalls that the national legal provisions that the inspectorate enforced included the Employment Ordinance of 1964 and the Employment of Women, Young Persons and Children Ordinance of 1939. The Committee would be grateful if the Government would indicate if these Ordinances are still in force; and if so, what enforcement measures have been taken relating to youth employment in tobacco production. Please provide full particulars of any violations and penalties imposed.

Articles 14, 21, 26 and 27. The Committee's comments under Articles 10, 16, 20 and 21 of Convention No. 81 apply.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Costa Rica, Kenya.*

Convention No. 130: Medical Care and Sickness Benefits, 1969

Libyan Arab Jamahiriya (ratification: 1975)

With reference to the comments which it has been making for a number of years, the Committee notes that the Government's report has not been received. It recalls that the previous information supplied by the Government contained only partial responses and did not include the statistics called for in the report form adopted by the Governing Body. As without this information it is impossible for the Committee to assess the extent to which effect is given to the provisions of the Convention, it once again raises the matter in a direct request in the hope that the Government will not fail to supply the information requested.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Denmark, Libyan Arab Jamahiriya, Norway.*

Information supplied by *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 131: Minimum Wage Fixing, 1970

Costa Rica (ratification: 1979)

The Committee notes the comments made by the Confederation of Workers Rerum Novarum (CTRN), which point out the long working hours effected without additional pay in the road transport sector, resulting in an excessively low wage rate per hour. It invites the Government to provide information on the question in the light of *Article 5* (effective application of provisions concerning minimum wages) *of the Convention.*

The Committee is also addressing a direct request to the Government on certain other points.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

Ecuador (ratification: 1970)

In its previous comments the Committee noted the information sent by the Ecuadorean Confederation of Free Trade Unions (CEOSL) concerning the application of *Article 2, paragraph 1, of the Convention.* The CEOSL considers that the amendment of section 168 of the Labour Code, introduced by section 29 of Act No. 133 to revise the Labour Code, creates a new category of workers "industrial apprentices" whose pay may not be less than 75 per cent of the minimum subsistence wage, for a period of no more than six months.

The Committee asked the Government to indicate the measures taken to ensure that people employed under the terms of an apprenticeship contract under section 168 of the Labour Code, and whose pay may not be lower than 75 per cent of the minimum subsistence wage, receive on-the-job training.

The Government indicates in its report that before the amendment of section 168 of the Labour Code, the labour legislation did not provide for any wages to be paid to apprentices. The purpose of the new provision is to ensure to the apprentice the payment of remuneration which may not be less than 75 per cent of the minimum subsistence wage but which may also be higher. The Government emphasizes that, for apprenticeship contracts, Act No. 133 requires a written contract to be drawn up in the presence of the labour inspector, who will register it. The Government indicates that 592 apprenticeship contracts, most of them in small-scale industries, were registered in 1992.

The Committee takes note of this information. It recalls that a wage lower than the minimum wage may be allowed for apprentices provided that in exchange they really receive training during working hours and at the place of work which enables them to acquire skills in a trade or occupation. It asks the Government to indicate the measures taken or under consideration to ensure that persons holding an apprenticeship contract may be paid a wage lower than the minimum subsistence wage only if, in return, they receive effective training.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Costa Rica, Ecuador, Guatemala, Guyana, Libyan Arab Jamahiriya, Nepal.*

Convention No. 132: Holidays with Pay (Revised), 1970

Iraq (ratification: 1975)

1. With reference to its previous comments, the Committee notes the Government's statement in its latest report that, in the opinion of the competent authority (the Ministry of Finance), the Convention does not apply to officials in the public service covered by the provisions of Act No. 24 of 1960. The Committee observes that the Government has been making this statement for several years despite the Committee's comments that the Convention applies to persons employed in the public service unless the Government specifically excludes them from the scope of the Convention. It therefore must once again emphasize that, with the exception of seafarers, no employed person is excluded from the scope of the Convention (see *Article 2, paragraph 1, of the Convention*) and that the Government did not indicate in its first report that it availed itself of the possibility of excluding officials from the application of the Convention (see *Article 2, paragraphs 2 and 3*). In this connection, it must reiterate its prior requests to the Government to provide in its next report detailed information on the following points:

(a) *Article 9, paragraph 1.* The Committee notes that section 43(3) and 48(3) of Act No. 24 of 1960 permit the accumulation of up to 180 and 100 days of leave respectively for officials and employees in the public service. The Committee recalls the Government's attention to the fact that under the Convention, a part of the holiday consisting of at least two uninterrupted working weeks must be taken no later than one year, and the rest of the holiday no later than 18 months, calculated from the end of the year in which the holiday entitlement arises.

(b) *Article 11.* The Committee observes that upon termination of the employment relation following dismissal or resignation (sections 45(1) and 49 of Act No. 24 of 1960), officials apparently do not benefit either from a paid holiday in proportion to the length of service or from paid compensation. The same applies to school employees who terminate their service during the first half of the school year (section 48(10)). The Committee must recall that under this Article of the Convention, an employed person who has completed a minimum period of service should, on termination for any reason, receive a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

The Committee hopes that the Government will re-examine its position and take the necessary measures in the near future to bring Act No. 24 of 1960 into conformity with the Convention.

2. With regard to the holiday provisions of the Labour Code (Act No. 71), 1987, the Committee repeats its requests to the Government to provide detailed information on the following matters:

(a) *Article 6, paragraph 1, of the Convention.* The Committee notes that there are apparently no national laws or regulations giving effect to this provision of the Convention, under which public and customary holidays shall not be counted as part of the three weeks' annual holiday with pay prescribed in *Article 3, paragraph 3.* In this respect, the Government has indicated that, in the absence of a relevant provision in the Labour Code, section 150 of the Code provides that the provisions of other laws and of ratified Arab and international labour Conventions shall apply. The Committee wishes to call the Government's attention to the fact that, so far as the provisions of the Convention are not self-executing and, more generally, to avoid any uncertainty regarding the state of the law, the surest solution is to bring the national legislation explicitly into harmony with the provisions of the Convention.

(b) *Article 8, paragraph 2.* The Committee notes that under section 69(II) of the Labour Code, 1987, only six continuous days of leave must be taken at one time, when leave has been divided. It recalls that Article 8, paragraph 2, of the Convention provides that, when annual holiday with pay may be broken into parts, one of the parts must consist of a minimum of two uninterrupted working weeks (unless otherwise provided in an agreement between the employer and the employee).

(c) *Article 9, paragraph 1.* The Committee observes that, in the event of the deferral of a part of the holiday (under the conditions set out in section 73(III) of the Labour Code, 1987), the worker is entitled to compensation. In this respect the Committee reiterates that this provision is not in conformity with Article 9, paragraph 1, of the Convention, according to which the remainder of the holiday shall be granted and taken no later than 18 months from the end of the year in which the holiday entitlement has arisen.

The Committee requests the Government to take the necessary measures to bring the Labour Code, 1987, into conformity with the Convention on the above-mentioned points.

The Committee also trusts that the Government will supply detailed information in its next report on all legislative or regulatory action taken or contemplated to give full effect to all of the above provisions of the Convention.

[The Government is asked to report in detail in 1996.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, Cameroon, Finland, Germany, Ireland, Kenya, Luxembourg, Madagascar, Malta, Portugal, Sweden, Switzerland, Uruguay, Yemen.*

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

France (ratification: 1972)

The Committee notes that the Government's report, received in June 1994, does not contain detailed information which would enable it to conduct a first examination on the application of the present Convention. It therefore asks the Government to provide a detailed report containing precise and full answers to the questions in the report form approved by the Governing Body, including under *points IV and V.*

[The Government is asked to report in detail by 1 September 1995, at the latest.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Côte d'Ivoire, Germany, Greece, Guinea, Netherlands, New Zealand, United Kingdom, Uruguay.*

Information supplied by *Finland* and *Norway* in answer to a direct request has been noted by the Committee.

Convention No. 134: Prevention of Accidents (Seafarers), 1970

Costa Rica (ratification: 1979)

1. In the comments it has been making for a number of years, the Committee has pointed out that the national legislation contains no special provisions on accident prevention for seafarers within the meaning of the provisions of the Convention. The Committee has noted several times that section 283 of the Labour Code, as amended by Act 6727 of 9 March 1982, provides that detailed regulations on occupational health must be promulgated within one year at the most, and expressed the hope that such regulations, or any other appropriate instrument on accident prevention for seafarers, would be adopted and would cover the points set out in *Article 4, paragraphs 2 and 3, of the Convention*, and that the text would apply to all seafarers, including those engaged on fishing vessels, in accordance with *Article 1, paragraph 1.*

In its report received in 1988, the Government stated that the regulations in question were in the process of being drafted and would be sent to the ILO as soon as they had been promulgated. Since then, the Government has merely referred to its previous reports and the information contained in them. The Committee is bound to express the hope once again that the necessary provisions will be adopted and will be sent to the Office in the very near future.

2. In its previous comments the Committee drew the Government's attention to the need for appropriate measures to give effect to the following provisions of the Convention.

Article 2 (Compilation of statistics on occupational accidents among seafarers and investigation into the causes and circumstances of such accidents).

Article 3 (Inquiries and research into occupational accidents among seafarers).

Article 6, paragraph 3 (Training of labour inspectors responsible for inspecting ships with regard to living conditions on board and the hazards involved).

Article 7 (Setting up of the joint health committees provided for by Decree No. 18379-TSS).

Article 8 (Plans and programmes of the National Occupational Health Council in so far as they relate to the questions covered by the Convention).

In its report for 1988, the Government referred to the difficulties created by the total restructuring of the computer system of the National Insurance Institute and the reorganization of the National Occupational Health Council, and asked for time so that the necessary measures to ensure the application of these provisions of the Convention could be adopted. Since then, it has sent no fresh information on the matter; the Committee hopes that the Government has made good use of the intervening years and that in the very near future it will report on the measures that have been taken to give effect to the Convention.

* * *

In addition, a direct request regarding certain points is being addressed directly to the *United Republic of Tanzania*.

Convention No. 135: Workers' Representatives, 1971

Costa Rica (ratification: 1977)

The Committee notes that the Government's report was received when its work had already begun. It observes that the report does not contain any specific information to the questions raised. In these circumstances, the Committee can only repeat its previous observation which read as follows:

> The Committee asks the Government to provide information on the facilities granted under *Article 2 of the Convention* to workers' representatives, in practice, in the private sector and the public sector by collective agreements or other means, for example, such as those set out in the Workers' Representatives Recommendation, 1971 (No. 143) referred to below: facilities to enable them to carry out their functions promptly and efficiently; the necessary time off without loss of pay for carrying out their representation functions in the undertaking; access to the management of the enterprise; the right of assembly; the possibility of collecting trade union dues regularly on the premises of the enterprise; authorization to post trade union notices; the right to attend meetings, or such material facilities and information as may be necessary for the exercise of their functions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Côte d'Ivoire (ratification: 1973)

The Committee notes the Government's report and the report of the direct contacts mission, and the conclusions of the Committee on Freedom of Association concerning Case No. 1594 (296th report of the Committee approved by the Governing Body at its 261st Session, November 1994).

Article 1 of the Convention (protection of workers' representatives). The Committee notes with interest that sections 61 and 62 of the draft Labour Code are intended to improve application of the Convention by taking account of trade union pluralism, and amount to a recasting of section 136 of the Labour Code in force to allow representatives of all trade union organizations to stand for the first round of elections for staff representatives.

However, the Committee notes the content of Act No. 92-573 of 11 September 1992 concerning dismissal for economic reasons, section 5 of which, subject to the provisions of section 64(2) of the Labour Code, renders null and void any collective agreement establishing a procedure for the dismissal of more than one worker for economic reasons which is not consistent with the procedure established by the Act and Circular 07585/EFP/CAB of 20 July 1993 signed by the Minister of Employment and the Public Service and addressed to the President of the Employers' Union of Côte d'Ivoire. The Circular states in particular: "In substance, this Act abolishes the authorization of the inspector of labour and labour law in the event of dismissal for economic reasons and *transfers the responsibility for the operation to the head of the enterprise* who shall inform the staff in the presence of the labour inspector." In the Circular, the Minister concludes that the new Act on economic dismissal has now been promulgated and the procedure laid down in it is the one to be observed without any further formalities by the signatories of the inter-occupational collective agreement.

The Committee notes the concern about the Act and Circular expressed by the representatives of both the General Union of Workers of Côte d'Ivoire (UGTCI) and the Federation of Free Trade Unions of Côte d'Ivoire (Dignité) during the direct contacts mission. According to these organizations, these texts make it possible to nullify the effects of Article 38 of the collective agreement of 1977 on the protection of trade union representatives. The Committee recalls the importance it attaches to observance of Article 1 of the present Convention. It also recalls the content of Article 6, paragraph 2(f), of the Workers' Representatives Recommendation, 1971 (No. 143), which recommends recognition of a priority to be given to workers' representatives with regard to the retention in employment in case of reduction of the workforce.

The Committee asks the Government to indicate in its next report any measures taken or envisaged to ensure observance in this respect of Article 1 of the Convention both in law and in practice.

Iraq (ratification: 1972)

The Committee notes with regret that the Government's report still does not reply to the previous direct requests for more detailed information on the application of *Article 2 of the Convention*, and in particular that it does not contain any agreements concluded between the workers' and the employers' organizations to which the Government had referred in its previous report and which would provide members of trade union committees with the facilities necessary for carrying out trade union functions.

In these circumstances, the Committee is bound once again to draw the Government's attention to the terms of Article 2, under which facilities must be afforded in the enterprise to workers' representatives (such as the necessary time off to attend meetings, training courses and trade union seminars, conferences and congresses; access to workplaces when necessary; space to post trade union notices, etc., as indicated in Chapter IV of the Workers' Representatives Recommendation, 1971 (No. 143)).

Noting that under the Trade Union Act (No. 52) of 1987 which establishes the trade union monopoly, the General Confederation of Trade Unions, the central organization designated by law, pays the wages of full-time trade union officials (sections 41 and 27(7)) and not the employer, the Committee draws the Government's attention to the fact that facilities must be afforded in enterprises to workers' representatives to enable them to carry out their functions promptly and efficiently, *and in full independence*, so that they may defend the economic, social and occupational interests of the workers.

The Committee is bound to request the Government once again to provide with its next report the texts of any agreements concluded between trade unions and employers which afford workers' representatives in enterprises the above facilities, as well as any other relevant information on the practical application of Article 2.

Jordan (ratification: 1979)

The Committee notes the Government's reports indicating that the draft Labour Code which is in the process of being elaborated is currently before Parliament for discussion.

The Committee regrets that although drafting began in 1982, the Labour Code has still not been adopted and that there appear to be no other provisions in laws or agreements that give effect to Article 2 of the Convention. It is therefore bound to ask the Government once again to take steps at the earliest possible date to enable workers' representatives to carry out their functions promptly and efficiently (in the light of the examples set out in the Workers' Representatives Recommendation, 1971 (No. 143) such as: granting them time off to carry out their functions and attend meetings, training courses, seminars, conferences and congresses; and giving them access to all workplaces and to the management, and facilities to collect trade union dues and display notices). It asks the Government to indicate the measures taken in this respect in its next report.

Sri Lanka (ratification: 1976)

The Committee notes the information provided in the Government's latest report as well as the comments made by the Ceylon Workers' Congress, the Lanka Jathika Estate Workers' Union, the Jathika Sevaka Sangamaya (National Employees' Union) and the Employers' Federation of Ceylon.

In its previous observation, the Committee had referred to the wide-ranging restrictions contained in the Emergency Regulations No. 1 of 6 January 1990 and had considered that these Regulations, contrary to *Article 2 of the Convention*, impaired the day-to-day functioning of workers representatives in the undertaking. While noting the Government's indication that such restrictions were necessary given the exceptional situation in the country, the Committee recalled that there was no provision in the Convention allowing the invocation of a state of emergency to justify exemption from the obligations arising under it, but that the ILO supervisory bodies have found that in circumstances of extreme gravity (e.g. serious disruption of civil order), restrictions may be justified on the conditions that they are limited in scope and duration to what is strictly necessary to deal with the situation in question. Once the acute emergency has subsided, bans or restrictions under state of emergency legislation should immediately be lifted. The Committee notes that several Emergency Regulations have been issued since its previous comments to supersede the earlier ones. The Committee trusts that any emergency restrictions on the functioning of and facilities available to workers' representatives have now been lifted and requests the Government to provide information in this respect in its next report.

The Committee notes the observation made by the Jathika Sevaka Sangamaya (National Employees' Union) in a communication dated 10 August 1992 relating to harassment of office-bearers by their employers. The Committee would recall that, in previous comments, it has drawn the Government's attention to the importance of effective protection of workers' representatives against any act prejudicial to them — including dismissal — based on their status or activities as workers' representatives and to the need to adopt measures in this regard beyond the approval and appeals procedures provided for in the Termination of Employment of Workmen (Special Provisions) Act, 1971, and the Industrial Disputes Act, 1967. In its report for the period ending 30 June 1987, the Government indicated that the legislation would be reviewed and this matter pursued as soon as the situation prevailing in the country permitted. The Committee expresses the hope that the Government is now in a position to review its legislation and to take the necessary measures to ensure the protection of workers' representatives in accordance with *Article 1* of the Convention. The Government is requested to indicate, in its next report, the progress made in this regard.

The comments of the Lanka Jathika Estate Workers' Union dated 30 July 1992 have been examined by the Committee in 1994 under Convention No. 98.

[The Government is asked to report in detail in 1996.]

United Republic of Tanzania (ratification: 1983)

The Committee notes the Government's report. With reference to its previous comments on the lack of any protection or facilities for workers' representatives in the undertaking in the Organization of Tanzanian Trade Unions (OTTU) Act No. 6 of 1991, the Committee notes the Government's statement that the Security of Employment Act 1964 (section 8(b)) provides that an employer shall not discriminate against (a workers' representative) on the ground of such representative's membership of the (workers') committee and "... shall not terminate the employment of a member of the committee ... without the prior approval of a labour officer". Moreover, the Committee notes with interest that section 8 provides for duties of employers in respect of affording workers' representatives such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

As regards section 4 of the OTTU Act, which establishes OTTU as the sole trade union body representative of all employees in the United Republic, the Government had stated in its previous observation that this provision would be reviewed once the ongoing elections from branch level to national level were completed and that the OTTU was only a caretaker body for the transition towards establishing a freely elected and constituted body of workers. The Government now indicates in its report that so far elections have taken place in respect of the Teachers' Union, which has been given full registration, and that it hopes for the same in other crafts/professions.

The Committee trusts that section 4 of the OTTU Act will be reviewed once the ongoing elections from branch level to national level are completed. It requests the Government to keep it informed of any developments in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Austria, Brazil, Croatia, France, Netherlands, Rwanda, Yemen.*

Convention No. 136: Benzene, 1971

Guyana (ratification: 1983)

In comments it has been making since 1987, the Committee noted that national laws and regulations were too general to give full effect to most of the provisions of the Convention, and that specific measures should therefore be taken to regulate the use of benzene and products containing benzene in accordance with the Convention.

The Committee noted the Government's indication in its report for 1992 that active consideration was still being given to the proposals for legislation concerning benzene, and that assistance from the ILO would be sought as soon as these proposals were accepted.

The Committee notes the Government's indication in its latest report that specific measures to give full effect to the Convention have still not been taken, but a national meeting was to be held in December 1993 to look at legislative reforms in the area of occupational safety and health. The Committee hopes that the Government will supply information on the decisions reached at this meeting on the extent of participation of representatives of employers' and workers' organizations in the meeting, and on progress made towards the adoption of the specific measures required under the Convention to protect workers against hazards of poisoning arising from benzene.

[The Government is asked to report in detail in 1996.]

Zambia (ratification: 1973)

Article 7 of the Convention. The Committee notes with satisfaction that pursuant to its earlier comments an amendment to the Factories (Benzene) Regulations of 1978 has been made by Statutory Instrument No. 158 of 1993 to the effect that work processes involving the use or products containing benzene shall be carried out in an enclosed system, and where this is not practicable, efficient means shall be provided to ensure the removal of benzene vapour. The Committee is addressing a direct request to the Government concerning a number of other points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *India, Malta, Zambia*.

Convention No. 137: Dock Work, 1973

Requests regarding certain points are being addressed directly to the following States: *Afghanistan, Egypt, Guyana*.

Information supplied by *Iraq* in answer to a direct request has been noted by the Committee.

Convention No. 138: Minimum Age, 1973

Belarus (ratification: 1979)

Further to its previous observation, the Committee notes that the provisions of section 21 of the Rights of the Child Act, in its final form, are in line with the provisions of section 173 of the Labour Code in its December 1992 version: they permit the conclusion of a work contract with a person of 14 years of age or older subject to the written consent of a parent or persons acting in *loco parentis*; persons of 16 years of age or older can conclude such a contract independently. The provision contained in an earlier version of the Rights of the Child Act allowing the employment of children from the age of 12 under certain conditions, which would have contravened the minimum ages set forth by the Convention, was thus replaced by the above-mentioned provisions.

The Committee is also addressing a direct request to the Government concerning certain points.

Dominica (ratification: 1983)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted from the Government's last report that the national laws had not been amended to give effect to the minimum age for admission to employment or work, which was specified to be 15 years when the Convention was ratified by Dominica. The Committee hopes that a detailed report will be supplied for examination by the Committee and that it will contain full information on the matters raised in its previous comments, which the Committee raises once again in a request directly addressed to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Kenya (ratification: 1979)

The Committee notes the information supplied by the Government in its report. It notes the persistence of difficulties in the application of the Convention and suggests that the Government might have recourse to the assistance of the Office to bring its legislation into conformity with the Convention on the points raised in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belarus, Dominica, Guatemala, Kenya, Mauritius, Sweden.***

Convention No. 139: Occupational Cancer, 1974

Guyana (ratification: 1983)

1. In comments it has been making since 1988, the Committee noted that only ionizing radiations from medical and dental use had been subject to control, and that no other carcinogenic substance had been prohibited or made subject to control. The Government indicated in 1988 that the occupational health and safety sector of the Ministry of Labour was being restructured, that consultations were taking place on a repeal and re-enactment of the Factories Act and that with the completion of this exercise it was hoped that other areas of occupational exposure would be covered by control and supervision. In 1992, no progress had been made, and the Committee notes the Government's indication in its latest report that it regretted no action was taken to put in place the requirements of the Convention; however, a national meeting was to be held in December 1993 to look at all aspects of occupational safety and health in the country.

The Committee hopes that the Government will soon be in a position to report progress in the application of the Convention, particularly with reference to the following specific requirements of the Convention:

- the determination of carcinogenic substances or agents to which occupational exposure is prohibited or made subject to authorization and control, *Article 1 of the Convention*;
- the replacement of carcinogenic substances and agents by less harmful substances or agents, and the reduction to the minimum of the number of workers exposed and

the level and duration of exposure, *Article 2* of the Convention; on this point, the Committee also refers to its general observation of 1992 under the Convention;

- the protection of workers against the risks of exposure and establishment of an appropriate system of record, *Article 3* of the Convention;
- the information to be provided to workers on the dangers involved and the measures to be taken, *Article 4* of the Convention; and
- medical examinations and biological and other tests and investigations for exposed workers, *Article 5* of the Convention.

The Committee also hopes that the Government will supply information on the structure of the December 1993 meeting, particularly with regard to the participation of representatives of employers' and workers' organizations in the meeting, and on any further measures taken to ensure, in conformity with *Article 6(a)* of the Convention, that the necessary steps to apply the convention are taken in consultation with the most representative organizations of workers and employers.

2. The Committee previously referred to additional measures to be taken in respect of ionizing radiations for medical and dental use to give effect to *Article 1 (paragraph 3)* and *Article 5* of the Convention. In the absence of further information on this matter, it again expresses the hope that the Government will report progress made in applying the revised versions of the United Kingdom Codes of Practice in this field, and in ensuring that workers shall be provided with medical examinations during the period of their employment and thereafter to evaluate their exposure and the state of their health in relation to occupational hazards.

Convention No. 140: Paid Educational Leave, 1974

Spain (ratification: 1978)

Further to its previous observation, the Committee notes with interest the Government's report which refers to recent progress in the application of the Convention. The Committee notes in particular that the National Agreement on Continuous Training concluded on 16 December 1992 for the period 1993-96 establishes individual leave for training for the purposes of development or adapting the worker's technical and vocational skills, which is to be distinguished from training organized as part of the on-the-job training plan. The same Agreement organizes the funding of the remuneration of workers on educational leave, which must be equivalent to the average wage provided for in the applicable collective agreement. With its report, the Government sends the text of the first collective agreements giving effect to these provisions of the National Agreement in several branches of activity. The Committee would be grateful if in its next report the Government would state the requirements for obtaining remuneration during individual leave for training purposes.

The Committee notes that the paid educational leave established by collective bargaining is for the vocational training purposes specified in *Article 2(a) and Article 3(a) of the Convention*, and asks the Government in its next report to indicate any new measures that have been taken, for example in the renegotiation of the National Agreement on Continuous Training which is due to expire in 1996, to promote the granting of paid educational leave in the private sector for the purposes of general, social and civic education and trade union education as specified by the Convention *(Article 2(b) and (c), and Article 3(b) and (c))*.

The Government also provides information in its report on the number of training courses organized by the public administration for its own employees. The Committee hopes that the Government will be able to provide more detailed statistics in its next report of the number of workers granted paid educational leave in the public and the private sectors *(Part V of the report form).*

United Kingdom (ratification: 1975)

1. The Committee notes the Government's report and the enclosed comments of the Trades Union Congress (TUC). In the main, the information contained in the Government's report deals with various aspects of its training policy, such as the introduction of a national record of achievement system and training for work for the unemployed with a view to their return to employment. The Committee observes that the above measures concern the Human Resources Development Convention, 1975 (No. 142), and the Employment Policy Convention, 1964 (No. 122), to which the United Kingdom is also a party, rather than Convention No. 140 which is intended specifically to promote the grant of paid educational leave defined as "leave granted to a worker for educational purposes for a specified period during working hours, with adequate financial entitlements" (*Article 1 of the Convention*).

2. The TUC submits that the 1989 Employment Act restricts the grant of leave for trade union education which is now limited to those matters for which a union is recognized for collective bargaining. Noting that such leave is granted only to trade union officials, the Committee recalls that paid educational leave for the purpose of trade union education provided for in *Article 2(c)* of the Convention should, under *Article 3(b)*, contribute "to the competent and active participation of workers and their representatives in the light of the undertaking and of the community".

3. The TUC observes more generally that there is no statutory entitlement to paid educational leave. In this connection it considers that the contracts of employment of young people should stipulate a right to education and training. Furthermore, there is very little paid educational leave negotiated collectively and it tends to be available to white-collar or professional employees. According to the Committee, such a situation should draw attention to the purpose of "training at any level" attributed to paid educational leave by *Article 2(b) of the Convention.*

4. In its reply to the TUC's comments, the Government states that it does not regard statutory entitlements in this area as appropriate and that its policy is to meet the provisions of the Convention by encouraging motivation and choice, not statutory imposition. It points out in this context that, under Article 2 of the Convention, the methods by which the promoting of the granting of paid educational leave is implemented should be "appropriate to national conditions and practice". The Committee must none the less draw the Government's attention to the fundamental obligation, which is also laid down in Article 2, to formulate and apply a policy for this purpose. As it pointed out in its *General Survey* of 1991, such a policy presupposes that the public authorities have decided upon a specific course of action that necessarily involves authorities and bodies for a certain length of time (paragraph 327), even if the Convention allows a large measure of flexibility in the formulation and application of the policy (paragraph 328).

5. The Committee hopes that the Government's next report will contain additional information demonstrating that it is effectively formulating and applying, in association with all the concerned bodies referred to in *Article 6 of the Convention*, a policy for the

promotion of paid educational leave for the purposes set out in Articles 2 and 3 and which meets the requirements, in particular, of the provisions of *Articles 1 and 11*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Hungary, Kenya, Mexico, Nicaragua, Poland, Sweden, United Republic of Tanzania, Venezuela*.

Convention No. 141: Rural Workers' Organizations, 1975

India (ratification: 1977)

The Committee notes the information provided by the Government in its latest reports. It notes in particular that the National Commission on Rural Labour (NCRL) recommended central legislation for agricultural labour to include, among others, a provision for enabling the formation of trade unions of agricultural labourers to carry on their activities under applicable laws. According to the Government, these recommendations have been referred to a group of Labour Ministers of state governments for study and report. The Government is requested to indicate in its next report the progress made with respect to the NCRL recommendations and any measures taken as a result.

1. *Refusal of Government of Maharashtra to negotiate with muster assistants employed through the Employment Guarantee Scheme*. In its earlier comments, the Committee noted that, despite a Bombay High Court decision striking down a notification issued by the Government providing that muster assistants (workers that provide water or medical facilities at work sites) were not covered under the Industrial Disputes Act (IDA), 1947, or the Trade Unions Act, 1948, the Government still refused to negotiate with these workers. In its latest report, following several court judgements which rejected the Government's previous contention that muster assistants were part of the Employment Guarantee Scheme and provided that pay scales applicable to muster assistants of the Public Works and Irrigation Department should also be applicable to other muster assistants, the Government states that it is clear that these individuals have been treated as government servants and not as rural workers, thus the Convention does not apply to them.

The Committee recalls, however, its previous comments in which it considered that muster assistants were persons engaged in related occupations in a rural area as defined by Article 2 of the Convention. The Government is therefore requested to indicate, in its next report, the legislation which governs the rights of these workers under the Convention as well as any steps taken to promote the widest possible understanding of the need to further the development of rural workers' organizations, including for muster assistants, as provided for under Article 6 of the Convention.

2. *Alleged inadequate pay and service conditions of female workers employed in the state government's "Integrated Child Development Scheme"*. While noting that the Government maintains its position that the female workers in the Integrated Child Development Scheme (ICDS) cannot be considered to fall within the Convention's definition of rural workers even though they are mainly located in rural and tribal areas, the Committee still considers that these workers are covered by the "related occupations" provision in Article 2. While further noting from the Government's report that there are no restrictions to the constitutional guarantee of freedom of association, the Committee would nevertheless request the Government once again to provide more information

respecting the steps taken to *facilitate* the establishment and growth, on a voluntary basis, of strong and independent organizations of these workers, without discrimination, as provided in *Article 4*.

3. *Working conditions and wages of forest and brick-making workers*. The Committee recalls the earlier comments made by the Hind Mazdoor Sabha Union (HMS) stating that the conditions of forest and brick workers were equivalent to that of bonded labour and that the state government had failed to help encourage the organization of these workers. In its latest report, the Government has indicated that enforcement of the labour legislation extended to these workers has not been satisfactorily managed due to the inadequacies of the labour inspection machinery to ensure that workplaces scattered over wide areas are inspected regularly. Resource constraint has come in the way of effective enforcement and bringing about improvements in this direction. The Committee hopes that the Government will be in a position to take measures in the near future to improve the enforcement machinery of laws covering rural workers, including forest and brick-making workers, and requests the Government to indicate the steps taken to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of these workers.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Costa Rica, Guatemala, Philippines, Zambia*.

Information supplied by *Malta* in answer to a direct request has been noted by the Committee.

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to the following States: *Egypt, Greece, Jordan, San Marino, Venezuela*.

Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

Kenya (ratification: 1979)

The Committee notes the Government's statement that, in view of the very large influx of refugees into the country, combined with the serious unemployment problem, which also affects university graduates, the question of free choice of employment for migrant workers will have to depend on the discretion of the Government, in accordance with the declared localization policy. As a result, migrant workers, depending on their level of skills and experience, will normally not be allowed to take up jobs which could easily be done by nationals.

The Committee recalls once again that, under the terms of *Article 10 of the Convention*, a national policy designed to promote and to guarantee equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms must be declared and pursued for migrant workers or members of their families who are lawfully within the territory of the State which has ratified the Convention. By virtue of *Article 12(d)*, any administrative instructions or practices which are inconsistent with the policy of equality of opportunity and treatment set out above have to be modified.

However, the Committee notes that the Government recognizes in its latest report that it is now necessary to take into account *Article 14(a)* of the Convention, which permits States which have ratified the Convention to make the free choice of employment of migrant workers subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years. The Committee hopes that the Government will re-examine the national policy on migrant workers in the light of *Articles 10 and 12* of the Convention and that it will be able to indicate in the near future the measures which have been taken or are envisaged to bring national law and practice into conformity with the Convention.

Portugal (ratification: 1978)

With reference to the comments that it has been making for several years concerning the application of *Article 9, paragraph 3, of the Convention*, the Committee notes with satisfaction the repeal of Legislative Decree No. 264/B/81 concerning the entry, stay, departure and expulsion of foreigners, by Legislative Decree No. 59/93 of 3 March 1993 under which, in the case of the departure from the country of a migrant worker, the costs incurred in respect of him or his family, which cannot be charged to him by virtue of the provisions of international Conventions and which cannot be borne by the transport companies, shall be covered by the State (section 114 of Decree No. 59/93).

The Committee is also addressing a request directly to the Government on certain points.

San Marino (ratification: 1985)

The Committee notes the information supplied by the Government in reply to its previous comments. It notes with interest the Government's statement that in San Marino all workers have freedom of choice in employment and occupation, regardless of their nationality or civil status.

Venezuela (ratification: 1983)

The Committee notes the conclusions and recommendations of the committee set up to examine the representation made by the International Organization of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), approved by the Governing Body of the ILO at its 256th Session (May 1993). It also notes with interest the Government's statement that it intends to prepare a Bill with a view to suppress or to restrict discriminatory treatment between foreign and national workers will be prepared after consultation with the social partners.

Article 10 of the Convention. 1. With reference to the recommendations adopted by the Governing Body inviting the Government to take appropriate measures to abrogate or amend the provisions of sections 27, 28, 30 and 317 of the Organic Labour Act of 1990 in the light of the principle of equality of opportunity and treatment between national workers and migrant workers established by *Article 10* of the Convention, the Government recognizes that by setting a 10 per cent limit on foreign workers in the enterprise and a 20 per cent limit on the overall wages of such workers in the enterprise, sections 27 and 317 of the above Act in a certain manner violate the principle of equality of treatment between foreign and national workers. The Government states that it is its responsibility, by virtue of article 84 of the Constitution, which does not establish discrimination between foreigners and nationals of Venezuela, to guarantee nationals of Venezuela employment "which provides them with a worthy and decent living".

The Committee recalls the comments that it made previously on the analogous provisions of the Labour Act of 1983. Furthermore, it recalls that, when requested on two occasions by the Government to give an opinion on the draft Organic Labour Act, the ILO suggested the elimination of these provisions on the basis, among others, of the above comments of the supervisory bodies. It requests the Government to indicate the measures which have been taken, in consultation with employers' and workers' organizations, to give effect to the principle of equality of treatment between migrant workers and national workers.

2. With regard to section 404 of the Organic Labour Act of 1990, the Government also recognizes the contradiction between the content of the above section and the principle of equality of treatment between foreign and national workers. According to the Government, the problem lies in the fact that the requirement for prior authorization for foreign workers to hold trade union office goes back to the Labour Act of 1936.

The Committee recalls that the policy designed to guarantee equality of opportunity and treatment set out in *Article 10* of the Convention covers trade union rights for persons, who, as migrant workers or as members of their families, are lawfully within the territory of the State which has ratified the Convention. It requests the Government to indicate the measures which have been taken, in consultation with employers' and workers' organizations, to give effect to the principle of equality in the exercise of the right of association between migrant and national workers.

Article 12(g). 3. With reference to section 30 of the Organic Labour Act of 1990, the Government emphasizes that, in the event of the recruitment of foreign workers, this section requires preference to be given to "those whose children were born on Venezuelan territory, who have a Venezuelan spouse or a residence in the country or those with the longest period of residence in the country". This provision therefore establishes criteria which have to be taken into consideration in the event of the conclusion of a contract of employment with foreign workers. In a case where two applicants for a job are equally suitable, the employer has to select the applicant who responds to criteria proving the existence of a closer connection with the country. The Government hopes, in the context of the general regulations being prepared under the Organic Labour Act, to reduce the discriminatory effects of the above section, possibly by placing emphasis on other criteria, such as the family responsibilities of the applicant for employment.

The Committee of Experts recalls that the above-mentioned committee considered that this provision is not in accordance with the principle of equality of opportunity and treatment with regard to working conditions for all migrant workers who exercise the same activity, whatever might be the particular conditions of their employment, in accordance with Article 12(g) of the Convention.

The Committee hopes that the Government will be in a position to indicate the measures which have been taken to bring the provisions on recruitment into conformity with the principle of equality of opportunity and treatment in employment established by *Articles 10 and 12(g)* of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Benin, Burkina Faso, Cameroon, Cyprus, Guinea, Norway, Portugal, Togo, Uganda, Venezuela.***

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Bahamas (ratification: 1979)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that genuine consultations should be held frequently so that each of the questions listed in *Article 5, paragraph 1, of the Convention* may be examined when necessary, in accordance with the principle of "effective consultations" set forth in *Article 2*. Certain subjects (replies to questionnaires, submission to the competent authorities, reports to be made to the ILO under article 22 of the Constitution of the Organization) imply annual consultations, whereas other subjects (for example, proposals for the denunciation of ratified Conventions), arise less frequently.
>
> In these circumstances, the Committee again requests the Government to describe the measures taken or under consideration to hold *regular consultations* on these matters. It also requests the Government to furnish detailed information concerning the consultations held (during the period covered by the next report) on the various matters listed in Article 5, paragraph 1, specifying the results that these consultations have led to.
>
> Moreover, the Committee recalls that according to *Article 6*, representative organizations of employers and workers should be consulted on the necessity of producing an annual report on the working of the procedures provided for in the Convention. It requests the Government to state whether such consultations have taken place and, in the affirmative, to provide information on any results.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ecuador (ratification: 1979)

1. The Committee notes the Government's report. It also notes the observations on the application of the Convention sent by the Ecuadorian Central of Class Organizations (CEDOC), as well as the Government's comments on them. The CEDOC alleges that the Government holds tripartite consultations only very rarely. It also asserts that the Government has not sought information from the workers' organizations concerning the items on the agenda of the 1995 Session of the International Labour Conference. With its report the Government sent a copy of the various communications sent to the employers' and workers' organizations (including the CEDOC, e.g. "Oficio" No. 146-94 of 16 August 1994 concerning an item on the Conference agenda), but states that it has received no comment in response. The Committee observes that consultations which the Government carries out by written communication may well be *ineffective*, contrary to what is requested by *Article 2 of the Convention*. In this connection the Committee recalls that in its previous comments it expressed the hope that the Government would be in a position to organize such consultations in the near future and that it would provide full information and details on consultations held concerning *each of the items set out in Article 5, paragraph 1*. It trusts that in the next report the Government will indicate the frequency of such consultations and the nature of reports and recommendations resulting from them.

2. With reference to its previous comments, the Committee notes that, since for the time being no international instruments have been submitted and that no unratified Conventions have been re-examined with a view to their ratification, there have been no consultations on these matters. The Committee recalls that the re-examination at

appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate, is required under *Article 5, paragraph 1(c),* of the Convention. The Committee trusts that the Government's next report will contain details of the measures taken to hold the consultations required by this provision of the Convention. Furthermore, the Committee has also recalled that the obligation to hold consultations, established in *Article 5, paragraph 1(d),* does not stop at simply transmitting the reports on ratified Conventions to the representative organizations. The Committee asks the Government to indicate the procedures for the consultations held on matters that might arise out of its reports.

3. The Committee notes that in the Government's plan of action "Agenda for Development 1993-96", dialogue and cooperation in the field of labour are to be encouraged. The Government states that a plan for technical cooperation in the field of labour is being prepared and will be implemented by the Ministry of Labour with technical and economic support from the ILO and the UNDP. The Committee notes with interest that the above plan's objectives include institutionalizing certain bodies involved in the dialogue on social and labour matters which concern the activities referred to in Article 5 of the Convention. The Committee trusts that in its next report the Government will indicate the action undertaken in the context of the above-mentioned assistance.

Nicaragua (ratification: 1981)

1. The Committee notes the Government's brief report supplied in reply to its previous comments. The Government considers that the procedure of written consultation is the most appropriate, but that its operation requires improved training for employers' and workers' organizations in the field of international labour standards. The Committee notes in this respect that the Ministry of Labour has requested the technical cooperation of the ILO for the holding of a tripartite seminar on standards. The Committee also recalls the relevant provisions of *Article 4 of the Convention* concerning the arrangements to be made between the competent authority and the representative organizations for the financing of any necessary training of participants in the procedures provided for in the Convention.

2. However, the Committee notes with regret that the Government's report does not provide the information requested in its previous observation on the measures which have been taken, in accordance with *Article 2,* to operate procedures which ensure effective consultations with respect to the matters concerning the activities of the International Labour Organization set out in *Article 5, paragraph 1.* The Committee trusts that the Government and the representative organizations of employers and workers will combine their efforts to give effect, if necessary with the assistance of the ILO, to the provisions of the Convention in the interests and to the satisfaction of the parties concerned. It hopes that the next report will indicate the progress achieved and will provide the information requested on the purpose, frequency and nature of the consultations provided for by the Convention.

Spain (ratification: 1983)

The Committee notes the information supplied by the Government in its report and the comments made by the General Union of Workers (UGT). The UGT states that the Government has never provided it with *copies of its reports,* but each year has sent only a copy of the questionnaires it receives from the ILO and asks the representative organizations for relevant comments, but gives them very little time to reply. The UGT acknowledges that this last matter can be remedied since the workers' organizations are able to send their observations directly to the ILO. However, it adds, the Government's failure to send the reports means that the unions do not know what steps the Government claims to be taking to ensure compliance with international standards, and are unable to make any comparison with their own positions. In a communication of 30 September 1994 the UGT asked the Government for the reports drawn up by the Ministry of Labour and Social Security. The Government asserts that it has treated the UGT in the same way as the other industrial organizations and lists the measures taken — giving their dates — which include the sending of reports. The Committee points out that one of the subjects to be dealt with in the consultations provided for in the Convention is matters arising out of reports to be made to the International Labour Office under article 22 of the ILO Constitution (*Article 5, paragraph 1(d), of the Convention*). It also points out that for such consultations to be effective it would be appropriate for employers' and workers' organizations to become acquainted with the content of the reports due under the ILO Constitution. The Committee notes that the reports requested must reach the International Labour Office within a prescribed time-limit. Consequently, the Committee is bound to ask the Government once again, under procedures "which ensure effective consultations" (*Article 2*), to take measures necessary to facilitate consultations between representatives of the Government, the employers and the workers on the items covered by the Convention (*Article 5, paragraph 1*), to the satisfaction of all the parties. Furthermore, the Committee would be grateful if the Government would indicate the nature of any reports and recommendations produced as a result of the consultations.

United Kingdom (ratification: 1977)

1. The Committee has noted the report provided by the Government for 1992-94 in reply to its previous comments. The Committee has also noted the discussion at the Conference Committee in June 1993 as well as the observations drawn up by the Confederation of British Industry (CBI) and the Trades Union Congress (TUC).

2. The questions which were the subject of allegations by the TUC and the comments made within the framework of the supervisory mechanism concerned primarily the consultations within the scope of *Article 5, paragraph 1(d) and (e), of the Convention* on, firstly, the questions arising out of reports to be made under article 22 of the ILO Constitution and, secondly, proposals on denouncing ratified Conventions.

3. The Committee notes with interest that following its comments and the discussion in the Conference Committee, the Government and the social partners came to an agreement in 1993 to amend the text of the 1977 agreement concerning consultations on reports due under article 22 of the Constitution. The new arrangements should ensure efficient consultations as provided in Article 2 of the Convention, with a view to preparing reports on ratified Conventions, in particular when they are the subject of comments by the supervisory bodies. The CBI has expressed its satisfaction with the functioning of the new procedure. For its part, the TUC, while having accepted the 1993 amendments, continues to express doubts as to the efficiency of consultations, due to the Government's refusal to accept the conclusions and recommendations of the supervisory bodies: according to the TUC the new procedure will not significantly improve the enforcement of ratified Conventions, which is the purpose of Convention No. 144.

4. With regard to consultations on proposals to denounce ratified Conventions, the Committee notes that the decision not to denounce Convention No. 97, taken with the approval of the TUC, seems to demonstrate the efficacy of these kinds of consultations although, in the case of denouncing Conventions Nos. 99 and 101, the TUC, after

consultation, expressed regret that the Government had not replied to its arguments in favour of maintaining the ratifications.

5. The Committee, recalling its previous comments on the extent of the consultation requirement under the Convention, hopes that through good faith use of the consultation procedure, as amended by agreement between the Government and the social partners, the Convention obligations will be fully met in the interest of all the parties.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bangladesh, Côte d'Ivoire, Gabon, Guatemala, Malawi, Mexico, New Zealand, Syrian Arab Republic, United Republic of Tanzania, Togo, Zambia.*

Information supplied by *Finland, Kenya, Norway, Portugal, Sweden, Zimbabwe* in answer to a direct request has been noted by the Committee.

Convention No. 145: Continuity of Employment (Seafarers), 1976

Requests regarding certain points are being addressed directly to the following States: *France, Netherlands, New Zealand.*

Information supplied by *Egypt* in answer to a direct request has been noted by the Committee.

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to the following States: *Finland, Iraq, Kenya.*

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

Italy (ratification: 1981)

Article 2(a)(i) of the Convention. Further to its previous comments, the Committee notes that the situation regarding the need for laws or regulations on hours of work has not changed. It therefore repeats its previous comments which read as follows:

> Under this provision each Member which ratifies the Convention undertakes to have laws or regulations laying down for ships registered in its territory safety standards including hours of work so as to ensure the safety of life on board ship. The Government indicates its view that hours of work should preferably be fixed by collective agreement, since this is more flexible and in any event legally binding *inter partes*. The Committee recalls that under Article 2(a)(iii) shipboard conditions of employment in general need only be the subject of laws or regulations in so far as, in the opinion of the Member, they are not covered by, for example, collective agreements. However, to the extent that the regulation of hours of work is a matter of safety of life on board ship it is required under Article 2(a)(i) to be the subject of legislation. To this extent, therefore, the Committee would be grateful if the Government would take the necessary steps to ensure that there are laws or regulations of an appropriate nature on this point, so that this paragraph of the Convention might be fully applied.

Article 2(g). The Committee once again notes the information that the results of technical, administrative and judicial inquiries into accidents are available to anyone, but that no specific measures have been taken or are planned to make public the final reports. It also notes that consultations with employers' and workers' organizations have shown that the current publication system is considered adequate, although no sample report of an inquiry was received by the Office. The Government in its most recent report states that the existing system of investigations results in findings, the majority of which are said to be of a preventive nature. The Committee recalls that under the Convention the final report of an official inquiry into any serious marine casualty involving ships registered in the territory, particularly one involving injury or loss of life, should normally be made public (see paragraph 258 of the Committee's 1990 *General Survey* of the Convention). The Committee hopes the Government will take the necessary steps to comply with this provision of the Convention, and that it will include in future reports the information requested in the report form as to the numbers of inquiries held and measures taken as a result.

Article 2(f). Further to its previous comments, the Committee notes the Government's report does not contain information requested in the report form concerning the functioning of inspection arrangements. It hopes the Government will provide full details.

[The Government is asked to report in detail in 1996.]

Japan (ratification: 1983)

The Committee notes from the Government's report that discussions are being held on the matters raised in its previous observation which read as follows:

> *Article 2(a) of the Convention.* (Conventions listed in the Appendix to the present Convention but not ratified by Japan.)
>
> — *Convention No. 53. Article 3.* 1. Further to its previous comments, the Committee notes the Government's views that the advances in maritime equipment since the time of the Convention obviate the need to restrict watchkeeping to officers, and that unlicensed watchkeeping under the supervision of a licence-holder is allowed.
>
> 2. The Japan Federation of Coastal Shipping Associations concurs with the Government and states that the decision to entrust the navigation watch to a rating independently and under the supervision of an officer is taken by the captain in the light of the circumstances. It considers coastal navigation safe and in compliance with the Convention.
>
> 3. The All Japan Seamen's Union points out that large numbers of coastal vessels are involved and it urges the Government to ensure watchkeeping is performed by licensed officers: this is regarded as especially needed because such vessels are habitually placed under the watch of a rating in the deck department for very long hours.
>
> 4. The Committee refers again to paragraphs 85 to 87 of its 1990 *General Survey* of Convention No. 147, and the requirement that no person should perform the duties of navigating officer-in-charge of a watch unless they hold a certificate of competency to do so. Whilst it understands the Government's indication that watchkeeping must take place "under the supervision" of a licence-holder, this does not, according to the Government, always mean the unlicensed crew member acts together with the officer, even though the Government indicates that safety is not impaired. The Committee hopes consultations between the Government and shipowners' and seafarers' organizations will help produce an agreed solution; and that the Government will provide practical details of the inspection and other measures taken to ensure that safety is not prejudiced.
>
> In addition, the Japanese Trade Union Confederation (JTUC-RENGO) and its affiliate Japan Seamen's Union express their deep concern about the Government's view that

unlicensed watch-keeping under the supervision of a licence-holder continues to be allowed. The said unions point out the small size of the crew on Japanese coastal vessels, especially those of less than 700 gross tonnes which number 3,000 in Japan, the long hours worked per person (3,000 hours per year), and the overtime work performed and state that this state of affairs renders the supervision of navigational watch difficult. In their view most maritime casualties concerning such vessels are directly or indirectly caused by the long working hours and fatigue of the crew and by the factor of the sole watch by unlicensed crew, as seen from the figures issued by the Japanese Maritime Disaster Inquiry in 1994. The Committee trusts the Government will provide full particulars on this question in its next report.

The Committee is again referring to other matters, including inspection, in a direct request.

[The Government is asked to report in detail in 1996.]

United Kingdom (ratification: 1980)

The Committee notes the Governments replies to its observations of 1994 and to the comments made earlier by the Trades Union Congress (TUC). The Committee also notes that additional comments from the TUC regarding related questions have been received too late to be examined fully at this session. The Committee will examine all these elements, including any replies given by the Government, at its next session.

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In addition, requests regarding certain points are being addressed directly to the following States: *Finland, Japan, Netherlands, Sweden.*

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

Brazil (ratification: 1982)

1. In its previous observation, the Committee noted the comments made by the Trade Union of Chemical and Petrochemical Industry Workers (SINDIPOLO) on the application of the Convention, which were received by the Office on 1 November 1993, and it requested the Government to supply detailed information in reply to these comments. The Committee notes the detailed reply provided by the Government in two communications received on 21 April and 25 October 1994.

In its comments, the Trade Union of Chemical and Petrochemical Industry Workers (SINDIPOLO) reported that in September 1993 the workers' representatives of SINDIPOLO and another trade union (SINDICONSTRUPOLO) had been invited to accompany two agents of the inspection service of the regional labour delegation (DTR) on their visit to the *Copesul S/A-Companhia Petroquimica do Sul* in order to check the occupational safety situation in the enterprise, particularly as regards noise, vibration and air pollution. They were not admitted onto the enterprise's land. They were only able to participate with the inspectors in their inspection visit the next day after the intervention of federal police officers. The SINDIPOLO alleges that such treatment of workers' representatives by the enterprise is in contravention of a series of provisions of the national legislation (section 1(7) of Regulatory Standard 01 of Ministerial Regulation No. 03 of 7 February 1988, Legislative Decree No. 56 of 9 October 1981 and Decree No. 93.413/86) and it constitutes non-observance of *Article 5, paragraph 4, of the Convention*, as well as of Article 3 of the Workers' Representatives Convention, 1971 (No. 135).

SINDIPOLO states that in a court action brought by *Copesul S/A-Companhia petroquímica do sul* against the regional labour delegate, the right to accompany the inspection officers of the DTR was not recognized for workers' representatives, who were considered to be alien persons, and section 1(7) of Regulatory Standard 01 of Regulation No. 03 of 7 February 1988 was considered to be a very doubtful provision. Finally, the judge's ruling abolished the supervisory mandate over occupational safety in respect of *Copesul S/A-Companhia petroquímica do sul* and restricted the access of inspectors to its territory. SINDIPOLO also states that similar judicial rulings had been handed down previously in similar cases.

In reply, the Government states that the facts described by SINDIPOLO are known to the Ministry, which adopts a similar position in this respect. As indicated by SINDIPOLO, workers' representatives had the right to accompany officers of the inspection service to control the observance of laws and regulations respecting occupational safety and medicine. However, judicial decisions which find against this right are binding on all parties (government, employers and workers) and will need to be appealed in due time, as was done. In order to find a solution to future situations and give statutory recognition to the important practice of inspection visits being accompanied by representatives of the enterprise as well as by the representative trade union of the workers at the workplace, a directive has been prepared and transmitted to all the members of the National Labour Council, who are to examine it within 90 days with a view to its publication in the *Official Journal*.

The Committee hopes that the above directive will make it possible to ensure that effect is given to Article 5, paragraph 4, of the Convention. It requests the Government to supply a copy of the directive when it has been adopted, as well as any information on the application in practice of the right of workers' representatives to accompany inspectors when they supervise the application of the measures prescribed in pursuance of this Convention.

2. With regard to a number of other provisions of the Convention, the Committee refers to the comments that it made in the form of a request addressed directly to the Government in 1994.

France (ratification: 1985)

With reference to its previous comments concerning the application of *Article 10 of the Convention*, the Committee notes with satisfaction the provisions of sections R.233-1, R.233-1-3 and R.233-42 of the Labour Code as amended by Decree No. 93.41 of 11 January 1993 which require the head of the establishment to provide workers with suitable personal protective equipment and ensure that it is properly used; to reduce vibrations, by means of personal protective equipment, to levels below those which are harmful to health and safety; and to ensure, by means of the necessary maintenance, repair and replacement, that personal protective equipment is in proper working order and sufficiently hygienic.

The Committee raises certain other points in a request addressed directly to the Government.

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, France, Sweden*.

Convention No. 149: Nursing Personnel, 1977

France (ratification: 1984)

With reference to the previous comments concerning the observations of the French Confederation of Christian Workers (CFTC), the General Confederation of Labour — Force ouvrière (CGT-FO) and the French Democratic Confederation of Labour — Health and Social Federation (CFDT), the Committee notes the information supplied by the Government.

1. The Committee notes with interest circular No. 20 of 4 May 1994 which changes the methods for taking account of former service and also allows service on humanitarian missions abroad to be taken into account. It asks the Government to indicate whether the principles laid down in this circular also apply to the private sector.

2. The Committee notes the Government's statement that the application of Protocol No. 1 concerning the reduction of working hours in the event of night work has required an increase in periods and funds. It notes that the application of the working hours established for nursing personnel in the public sector (39 hours per week reduced to 35 hours in the event of night work) is ensured in 51.55 per cent of public health establishments, covering 43.48 per cent of such staff in hospital establishments. It also notes that additional funds were allocated early in May 1994 by the Regional Directorates for Health and Social Matters (DRASS) so as to complete implementation of the system. The Committee asks the Government to continue to provide information on the application of the adjusted working hours to all hospital centres.

3. The Committee notes that Act No. 91-748 to reform hospitals establishes, in addition to advisory committees with trade union representation: (i) procedures for direct consultation with the service councils made up, depending on the size of the service or department, either of medical and non-medical staff of the service or department, or of representatives from the "functional units", in accordance with requirements established in regulations; (ii) procedures for specific consultation with nursing care committees composed of all personnel participating in the provision of nursing care, such as nurses and auxiliaries. It also notes that under section R.714-26-1 of the Public Health Code, members of the nursing care service committee are appointed by drawing lots among volunteers who must let the director of the establishment know that they are willing to stand. The nursing care service committee is consulted on the general organization of the service as part of a nursing care project, on monitoring and research in nursing care, on the preparation of a training policy and the establishment project. According to the survey on the nursing care service committees carried out in September 1993, of the 722 hospital establishments consulted, 25 indicated that they had no nursing care service committee.

The Committee notes that no mention is made of any participation by organizations representing the staff in the survey of September 1993 on nursing care committees, conducted by the Ministry of Social Affairs.

The Committee notes that the method for appointing members of the nursing care service committee is to draw lots among a set of volunteers. It understands that, although it is not unknown in French law, this method of appointment is exceptional in the area of staff representation. In the hospital sector, for example, section L.714-17 of the above-mentioned Code provides for the election of the members of the establishment's technical committee and recalls the requirements regarding representativeness for submitting the lists of candidates.

The Committee notes that *Article 5, paragraph 1, of the Convention* does not specify the role to be played by the representatives of nursing personnel in implementing the measures that must be taken, in accordance with methods appropriate to national conditions, to encourage consultation of such personnel in decisions concerning them. Even less does it specify how staff representatives should be appointed. The Committee none the less recalls the indications in Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation (No. 157), which refer expressly to representatives of personnel within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of representatives.

The Committee asks the Government to indicate why the drawing of lots was adopted as the procedure for appointing members of nursing care service committees, and to provide information on the participation of representative organizations in nursing care service committees.

The Committee is also addressing a direct request to the Government concerning certain other points.

Uruguay (ratification: 1980)

In its previous comments the Committee noted the observations made by the Association of Nursing Personnel of Uruguay to the effect that regulations establishing a nursing diploma had been adopted without those concerned having been consulted. It noted that the detailed explanations in the Government's report gave no information on the existence and results of the consultations provided for in *Articles 2 and 5, of the Convention*.

The Committee notes the detailed information supplied by the Government. The latter refers in particular to a technical nursing committee on which the Association of Nursing Personnel of Uruguay is represented.

The Committee asks the Government to provide detailed information on the composition and functions of the technical nursing committee including the texts regulating such committees.

The Committee is also addressing a request directly to the Government concerning certain other points.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Bangladesh, Belarus, Belgium, Congo, Egypt, France, Ghana, Greece, Guinea, Guyana, Jamaica, Kenya, Kyrgyzstan, Malawi, Malta, Norway, Poland, Russian Federation, Sweden, United Republic of Tanzania, Ukraine, Uruguay, Venezuela*.

Convention No. 150: Labour Administration, 1978

Germany (ratification: 1981)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Articles 2 and 4 of the Convention*. The Committee notes the information provided in reply to its previous direct requests. It hopes future reports will continue to supply details of labour administration in various sectors and at various levels.

2. The Committee notes the observations made by the German Trade Union Federation (DGB). The DGB alleges that the Government has damaged the effectiveness of the Federal Institution for Labour (BA) in areas such as employment creation, job counselling and placement by using funds allocated to it to pay the costs of integration of immigrants and refugees, which should be borne by general taxation. The role of private agencies in these fields has increased, according to the DGB, resulting in unequal competition.

3. The Government considers increased encouragement of job creation measures of labour market policy falls within the competence of the BA. It points to an increase in the numbers taking part in advanced vocational training programmes as indicating that the funds allocated are sufficient. The Government points out that the budget appropriations for job creation in 1991 are doubled. With respect to the expansion of opportunities for employment counsellors to cooperate in making appointments to managerial positions in enterprises, the Government indicates that the changes were made because of the changed circumstances in the labour market and that the role of these employment counsellors is limited by new guidelines. As regards "hirers", the Government notes that they are not in competition with the placement services of the BA.

The Committee notes these observations and asks the Government to keep providing information on developments in this matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1982)

The Committee notes the observations made by the General Union of Workers (UGT) made on 30 September 1994 and the replies provided by the Government in its most recent report. The Committee will examine later this year these questions as well as the Government's replies, which arrived too late for consideration at this session.

United Kingdom (ratification: 1980)

Article 5 of the Convention. The Committee notes from the Government's detailed report and its annexes that there have been significant organizational changes within the British training bodies and public employment service. It also notes that the Trades Union Congress (TUC) in its observations transmitted by the Government on 1 February 1995 refers to the provisions of this Article of the Convention and states that the former tripartite training system which was in operation since the 1980s, where there was consultation and negotiation at the national level (the Manpower Services Commission), regional level (Area Manpower Boards) and in sectoral Industry Boards, has been replaced by an employer-led, market-driven voluntary system in which there is no obligation to involve trade union representatives. It further notes that according to the TUC only 60 of the 82 Training and Enterprise Councils (TECs), which comprise two-thirds employers, include one trade union representative. The TUC states that Industry Training Organizations (ITOs) which replaced the tripartite Industry Training Boards (ITBs) are also employer-led and are not required to include trade union representatives and that union representation on the national bodies concerned with training is in general low. The TUC further states that the National Council for Vocational Qualifications which has a total of 14 members, Investors in People UK which has 13 members, and the National Advisory Council for Education and Training Targets which has 12 members, each has only one trade union representative. The Committee notes that the Government's reply to the TUC's comments dated 6 February 1995 does not address the questions of tripartism in the various bodies concerned with training. The Committee would be grateful if the Government would address the observations made by the TUC and indicate how consultations, cooperation and negotiations appropriate to national conditions, including consultation with the most representative organizations of workers, called for by this Article of the Convention are effectively applied under the new training arrangements.

Venezuela (ratification: 1983)

The Committee notes with satisfaction the information supplied by the Government in reply to its previous comments.

The Committee notes in particular that there are matters that are dealt through collective negotiations and agreements between employers' and workers' organizations that are part of activities in the field of national labour policy (*Article 3 of the Convention*). It also notes that consultations, negotiations and cooperation organized by the Office of Cooperation between Workers and Employers includes participation in events and meetings and interventions in collective labour disputes (*Articles 4 and 5*). The Committee further notes the information provided by the Government concerning the duties of the various services of the system of labour administration and the statistics regarding the work of the employment services.

It hopes the Government will continue to provide full particulars regarding the implementation of the Convention in its subsequent reports.

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In addition, requests regarding certain points are being addressed directly to the following States: *Cuba, Egypt, Israel, Suriname, Zaire, Zambia.*

Convention No. 151: Labour Relations (Public Service), 1978

Spain (ratification: 1984)

The Committee notes the Government's report and recalls that in its previous comments it requested the Government to provide information on how collective bargaining is conducted in practice in the case of civilian personnel of the armed forces appointed under a private work contract.

The Committee duly notes the Government's observations to the effect that civilian public servants working for the Military Administration negotiate through the Public Service Negotiating Bureau established by section 30 et seq. of Act No. 9/1987, and that staff working in the service of the Military Administration have the negotiating systems recognized in Title III of the Workers Regulations (Act No. 8/1980 of 10 March), concerning the establishment of working and social conditions through collective agreements, the latest of which was published in the Resolution of 23 June 1992, the year in which its initial validity was extended.

The Committee asks the Government to provide the texts of any collective agreements concluded by civilian public employees in the service of the Military Administration.

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In addition, a request regarding certain points is being addressed directly to *Guyana*.

Information supplied by *Guinea* in answer to a direct request has been noted by the Committee.

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Spain (ratification: 1982)

The Committee notes the Government's reply to the comments made by the Trade Union Confederation of Workers' Committees (CCOO) on the application of the Convention.

1. *Article 38, paragraph 2, of the Convention.* In its previous observation the Committee noted that, in comments of 21 October 1993, the CCOO indicated that there was no provision in the national legislation prohibiting the employment of persons under 18 years of age as operators of cargo-handling appliances in ports, in accordance with Article 38, paragraph 2, of the Convention. In this connection the above Confederation referred to Royal Legislative Decree No. 2/1986 concerning the employment of dockers and Royal Legislative Decree No. 145/1989 to approve the national rules for the handling and storage of dangerous cargoes in ports.

In its reply the Government refers to the Decree of 26 July 1957 establishing work which may not be done by women and minors, which, according to the Government, is still in force for minors. Under section 1(c) of the above Decree, workers under 18 years of age may not operate machines which involve a clear risk of accident having regard to the purpose for which they are used. More specifically, the operation of lifts, goods elevators and mechanical lifting appliances is included (under group XXIV) is in the list of activities prohibited for workers of under 18 years of age appended to the Decree. The Government also points out that under section 30 of the Regulations on the Safety, Health and Well-being of Dockers adopted by the Ministerial Order of 6 February 1971, the operation of mechanical appliances is prohibited for persons who do not have the necessary qualifications; sections 37 and 40 of the Regulations sets out the ways in which vocational training is to be developed for workers operating such appliances, and section 154 of the Regulations provides that only persons with the requisite qualifications may operate certain lifting and cargo-handling appliances, which are listed therein.

The Committee takes due note of this information. It also notes that article 13 of the fifth inter-provincial collective agreement for dockers subject to the labour legislation concluded in 1983 for a period of one year, provided that persons of between 16 and 18 years in dock work could only be apprentices and could not move to another category of workers before reaching the age of 18. The Committee asks the Government to indicate whether there is currently any provision of this type applying to workers of under 18 years of age and, if so, to provide a copy.

2. With regard to a number of other provisions of the Convention, the Committee refers to the comments which it made in the form of a request addressed directly to the Government in 1993.

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In addition, requests regarding certain points are being addressed directly to the following States: *France, Peru.*

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

Ecuador (ratification: 1988)

The Committee notes the Government's report and its reply to the previous comments. It notes that the National Traffic and Land Transport Council, after a first analysis of the legal and technical aspects of the implementation of the Convention, has been asked to set up an inter-institutional committee with a specific short-term mandate. A study on the matter also recommends that the ILO technical assistance should be requested.

The Committee hopes that the Government will shortly be able to establish the exact attributions of each sector of the administration in order to facilitate the application of the provisions of the Convention, so that it will then be in a position to provide the information requested on the laws and regulations that give effect to the provisions of the Convention, and on its application in practice, as required by the report form.

The Committee also notes a communication sent by the Ecuadorian Central of Class Organizations, which alleges that there is a lack of any machinery to supervise the application of the Convention. It hopes that the next report will also contain comments which the Government might consider appropriate to make on this matter.

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In addition, requests regarding certain points are being addressed directly to the following States: *Uruguay, Venezuela*.

Convention No. 154: Collective Bargaining, 1981

Requests regarding certain points are being addressed directly to the following States: *Brazil, Gabon, Romania*.

Convention No. 155: Occupational Safety and Health, 1981

Sweden (ratification: 1982)

The Committee has noted with interest the detailed information supplied by the Government in its report on the application of the Convention. It also notes from the Government's report that the following comment was submitted by the Swedish Trade Union Confederation:

> The central work environment agreement between the Swedish Employers' Confederation (SAF) and LO/PTK (the Swedish Trade Union Confederation and the Federation of Salaried Employees in Industry and Services) was revoked by SAF during the period to which this report refers. Furthermore, since the autumn of 1992, as a result of a government resolution, the central parties on both sides have not been represented on the Directorate of the National Board of Occupational Safety and Health or the regional supervisory bodies (SAF nominees having left the boards of all decision-making government authorities). Partite representation within the Work Environment Fund and on the governing bodies of testing and inspection organizations such as SWEDAC and the National Testing and Research Institute has ceased for the same reason. Accommodation of Articles 4 and 5 has become correspondingly more difficult.

The Committee would appreciate it if the Government would provide information on relevant developments with regard to the application of Articles 4 and 5 of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Netherlands, Sweden*.

Convention No. 156: Workers with Family Responsibilities, 1981

Requests regarding certain points are being addressed directly to the following States: *Argentina, Australia, Ethiopia, Niger, San Marino, Slovenia, Yemen*.

Convention No. 158: Termination of Employment, 1982

Spain (ratification: 1985)

1. With reference to its earlier comments, the Committee notes the information provided by the Government to the Conference in 1994 and the discussion that took place at the Conference Committee. The Conference Committee noted that some discrepancies seemed to continue to exist, both in law and in practice, in respect of the requirements of *Article 2, paragraphs 2 and 3, and Article 7 of the Convention* and expressed the hope that the Government will take all necessary measures to ensure in the near future the full implementation of the Convention both in law and in practice. The Committee trusts that the Government will be able to communicate, in its next report, information on the progress achieved in this regard.

2. The Committee notes the new observations made by the Trade Union Federation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT), transmitted to the ILO by the CC.OO. in January 1995. The CC.OO. informs about the procedure initiated before the Ombudsman ("Defensor del Pueblo") by the two above-mentioned workers' organizations, together with two other labour and human rights organizations, which alleged that certain provisions of Act No. 11/94 on the reform of the Workers' Charter are not in conformity with the Constitution. The CC.OO. and the UGT in their respective observations confirm their view that the national legislation does not conform with the provisions of *Article 7* of the Convention. The Committee observes that these observations were sent to the Government, in January 1995, for any comments that it considers appropriate. It therefore asks the Government to supply its comments on these observations with its next report.

[The Government is asked to report in detail by 1 September 1995, at the latest.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Gabon, Zaire*.

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983

Requests regarding certain points are being addressed directly to the following States: *Finland, France, Greece, Peru, Russian Federation, Zambia.*

Information supplied by *Denmark* and *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the following States: *Australia, Austria, Bolivia, Cyprus, Denmark, El Salvador, Finland, Germany, Italy, Mexico, Netherlands, Norway, Poland, Russian Federation, Spain, Switzerland, Ukraine, United Kingdom.*

Convention No. 163: Seafarers' Welfare, 1987

A request regarding certain points is being addressed directly to *Switzerland.*

Convention No. 164: Health Protection and Medical Care (Seafarers), 1987

Requests regarding certain points are being addressed directly to the following States: *Hungary, Sweden.*

Convention No. 165: Social Security (Seafarers) (Revised), 1987

A request regarding certain points is being addressed directly to *Hungary.*

Convention No. 166: Repatriation of Seafarers (Revised), 1987

A request regarding certain points is being addressed directly to *Hungary.*

Convention No. 167: Safety and Health in Construction, 1988

A request regarding certain points is being addressed directly to *Mexico.*

Convention No. 168: Employment Promotion and Protection against Unemployment, 1988

A request regarding certain points is being addressed directly to *Norway.*

Convention No. 169: Indigenous and Tribal Peoples, 1989

Bolivia (ratification: 1991)

The Committee has examined with interest the Government's detailed second report on the application of the Convention. It has noted in particular the significant measures that have been taken since the Convention's ratification with a view to improving the situation of the indigenous peoples of the country. These include the 1994 revision of the Constitution to recognize the existence of the indigenous peoples and the multi-ethnic and pluri-cultural nature of the Republic; the 1994 Act on Popular Participation which recognizes (section 3) the right of indigenous peoples to participate in decision making in accordance with their customs; and Supreme Decree No. 23858 of 9 September 1994 which defines indigenous peoples in terms very closely related to the present Convention.

The request the Committee is addressing directly to the Government notes a number of other measures which have been taken to give effect to the Convention's requirements. It also notes the obstacles encountered by the Government and by the authorities of the indigenous peoples in doing so. It has noted with particular interest in this regard the deliberations of the X Grand Assembly of the Indigenous Peoples of Bolivia (November 1994). It encourages the Government and the indigenous peoples to continue working together in this respect, and recalls that the technical assistance of the International Labour Office may be of assistance.

Mexico (ratification: 1990)

1. The Committee notes with satisfaction the Government's statement that, following the amendment of article 4 of the Constitution in 1991, the following provisions have been revised: (a) section 52 of the Federal Penal Code to provide that in cases in which action is being taken in a court of law against a person belonging to an indigenous ethnic group, "their customs and traditions shall be taken into account"; (b) sections 103, 104, 105, 128 and 220 bis of the Federal Code of Penal Procedure, as well as section 95 concerning the authorization to appoint an interpreter in cases where the defendant, the plaintiff, the witnesses or the experts do not understand Spanish to a sufficient level; (c) the General Education Act to provide that teaching shall be promoted in the national language (i.e. Spanish) without prejudice to the protection and promotion of the development of indigenous languages (section 7(IV)); and (d) section 27 of the Agrarian Act, which since 1991 has provided that indigenous lands must be protected and, in section 164, requires the agrarian tribunals to correct deficiencies in legal actions brought by indigenous persons.

2. The Committee also notes that up to June 1994 public consultations were held with the sectors concerned with the promotion of legislation on cultural diversity, but that there has not yet been any positive outcome. It hopes that the Government will provide information in its next report on this matter.

3. *Articles 4 and 7* (environment and development). The Committee notes with interest that the hydro-electric project at San Juan Tetelcingo was cancelled on 13 October 1992 by the President of the Republic and the Governor of the state of Guerrero, on the grounds that it was not beneficial for the communities of the region. It notes that this action was taken as a result of a resolution adopted by the Council of the Nahuas Peoples of the Alto Balsas.

4. *Article 20 (read with Article 11)* (labour). The Committee recalls that in its first report the Government communicated comments by the National Indian Institute (INI),

which reported serious abuses against workers in the rural sector, most of whom are indigenous. This included allegations of recruitment by "enganche" (a form of coercive recruitment), non-payment of wages, denial of the right to organize for indigenous workers, and a near-total lack of labour inspection in these areas. The Committee notes that the Government has provided information in its report on a number of programmes which have been begun in order to deal with these problems, but regrets that no information on the practical situation is included in the most recent report.

5. The Committee notes that the absence of basic protection for indigenous workers' rights and working conditions was one of the origins of the outbreak of violence among the indigenous peoples of Chiapas State beginning in early 1994. While it is aware that a situation of the kind outlined in the previous report will take time to correct, and while noting the encouraging information in the most recent report, the Committee hopes that the Government will keep it informed of the situation of indigenous workers in this region and elsewhere, and of the practical steps taken to improve the situation. Of these, one of the most important is frequent and effective labour inspection. Noting that the Government has not ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Committee encourages the Government to continue the efforts it has already made to improve the working situation; to provide detailed information on the number and results of inspection visits carried out among rural indigenous workers; and to have recourse if necessary to the technical assistance of the International Labour Office.

Norway (ratification: 1990)

The Committee notes with interest that with its report on the implementation of the Convention, the Government has sent an opinion of the Council of the Sami Parliament of Norway on the application of the Convention, and that the Government has taken close account of the opinions of the Sami Parliament in its own report. The Sami Parliament is a representative body of the country's indigenous Sami population, which has responsibility for Sami interests inside the country, in close cooperation with the national Government. The Committee notes in addition a 1992 comment of the Sami Parliament on the Government's first report, which was however received only in 1994.

The Committee also notes that the Sami Parliament has indicated its willingness to enter into an informal dialogue with the Committee, together with the Government. The Government has stated that it shares the wish to facilitate the implementation of the Convention, believing that open cooperation between governments and representative indigenous bodies may contribute effectively to the international promotion of indigenous rights and cultures, and that the Government therefore fully supports the suggestion of a supplementary dialogue.

The Committee welcomes warmly the dialogue between the Government and the Sami Parliament on the application of the Convention. It notes that this corresponds to the approach suggested in point VIII of the report form, and looks forward to continuing this exchange of information and views. It considers that this can best be carried out in the context of the regular reporting on the implementation of the Convention. The Committee also encourages the Government and the Sami Parliament to have recourse to any assistance that the International Labour Office may provide in this connection, and notes with interest a workshop in Oslo in September 1994 gathering all parties concerned in the administration of Sami questions, to discuss the Convention's implementation.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Mexico, Norway*.

Appendix I. Receipt of detailed reports on ratified Conventions as at 3 March 1995

(article 22 of the Constitution)

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
GRAND TOTAL	1573		717		2290
AFGHANISTAN	9	41 45 95 100 111 137 139 140 141	3	14 105 106	12
ALBANIA	0		14	6 10 11 16 29 52 58 59 77 78 87 98 100 112	14
ALGERIA	13	6 17 29-42 62 81 88 89 92 98 100 108 127	18	11 13 14 24 44 56 71 77 78 87 94 95 97 101 105 111 122 150	31
ANGOLA	5	14 98 106 107 111	2	105 108	7
ANTIGUA AND BARBUDA	0		9	11 12 14 87 94 101 105 108 111	9
ARGENTINA	26	8 9 11 14 22 23 34 41 42 45 52 68 71 77 78 79 87 90 95 105 107 111 115 124 144 159	0		26
AUSTRALIA	10	8 11 22 58 87 105 111 122 144 150	0		10
AUSTRIA	15	11 24 25 26 87 94 95 101 105 111 122 124 135 141 144	0		15
AZERBAIJAN	12	11 14 52 77 78 87 95 106 111 115 122 124	0		12
BAHAMAS	9	17 26 29 42 81 88 94 105 117	13	5 7 10 11 12 14 19 22 45 95 97 98 144	22
BAHRAIN	2	29 81	2	14 89	4
BANGLADESH	9	11 14 22 87 105 106 111 144 149	1	107	10

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
BARBADOS	25	7 11 12 17 22 29 42 63 81 87 90 94 95 97 98 100 101 105 108 111 115 118 122 135 144	0		25
BELARUS	13	11 14 52 77 78 87 106 111 115 122 124 138 160	1	95	14
BELGIUM	21	8 11 14 22 23 55 56 77 87 94 95 97 101 105 111 114 115 122 124 144 147	2	82 107	23
BELIZE	11	8 11 22 87 89 94 95 97 101 105 115	0		11
BENIN	7	11 14 87 95 105 111 143	0		7
BOLIVIA	11	77 78 87 95 102 111 117 122 124 130 169	4	5 14 105 106	15
BOSNIA AND HERZEGOVINA	0		4	8 14 22 23	4
BOTSWANA	1	14	0		1
BRAZIL	30	11 14 22 52 81 91 92 94 95 97 101 105 106 107 111 115 117 119 122 124 133 135 139 140 145 148 152 154 155 160	0		30
BULGARIA	0		23	8 9 11 14 22 23 24 25 34 44 45 52 55 56 71 77 78 87 94 95 106 111 124	23
BURKINA FASO	15	6 17 18 29 81 87 95 97 100 111 129 132 143 150 159	5	11 14 41 98 135	20
BURUNDI	0		13	11 12 14 17 29 42 52 81 89 90 94 101 105	13
CAMBODIA	1	122	0		1

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
CAMEROON	0		16	11 14 77 78 87 94 95 97 105 106 111 122 132 135 143 158	16
CANADA	7	8 14 22 87 105 111 122	0		7
CAPE VERDE	0		2	105 111	2
CENTRAL AFRICAN REPUBLIC	16	17 18 19 26 29 41 81 88 95 98 100 105 111 117 118 119	14	2 3 5 6 10 11 13 14 33 52 87 94 99 101	30
CHAD	0		13	6 11 14 29 41 52 81 87 95 98 100 105 111	13
CHILE	16	8 11 12 14 17 18 20 22 24 25 35 37 38 111 122 144	1	127	17
CHINA	6	11 14 22 23 45 144	0		6
COLOMBIA	17	8 11 14 22 23 24 25 52 87 95 98 101 105 106 111 160 169	0		17
COMOROS	0		11	11 14 52 77 78 87 95 101 105 106 122	11
CONGO	5	6 29 89 149 152	5	11 14 87 95 150	10
COSTA RICA	15	8 11 14 87 94 95 101 105 117 130 135 141 144 145 150	4	106 111 114 122	19
COTE D'IVOIRE	10	11 14 52 87 95 96 105 111 135 144	0		10
CROATIA	8	8 22 23 56 87 111 122 135	0		8
CUBA	23	8 11 14 22 23 52 77 78 87 94 95 97 101 105 106 107 111 122 135 140 141 145 150	0		23
CYPRUS	12	11 44 87 94 95 106 124 141 144 150 152 162	7	97 100 105 111 114 122 143	19
CZECH REPUBLIC	4	14 95 130 167	0		4

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
DENMARK	15	8 11 14 87 94 105 106 115 119 122 130 135 141 144 150	2	52 111	17
DJIBOUTI	13	1 9 22 23 24 29 37 38 56 71 87 94 105	16	11 14 44 52 55 77 78 88 95 100 101 106 115 120 122 124	29
DOMINICA	0		20	8 11 12 14 16 19 22 26 29 81 87 94 95 97 98 100 105 108 111 138	20
DOMINICAN REPUBLIC	8	52 77 87 95 105 106 107 111	0		8
ECUADOR	24	11 77 78 87 95 97 101 105 106 107 110 111 114 115 117 119 120 122 124 128 130 131 141 144	1	153	25
EGYPT	25	11 14 22 23 52 55 56 68 71 87 92 94 95 98 101 105 106 107 111 115 135 137 144 145 150	0		25
EL SALVADOR	0		2	105 107	2
EQUATORIAL GUINEA	0		2	14 100	2
ESTONIA	10	2 6 8 11 12 14 22 23 41 45	0		10
ETHIOPIA	5	11 14 87 106 111	0		5
FIJI	3	8 11 105	0		3
FINLAND	27	8 9 11 14 22 47 87 94 105 111 115 122 124 130 132 133 135 140 141 144 145 146 147 150 158 163 168	0		27
FRANCE	33	8 11 14 22 23 24 44 52 55 56 71 81 87 92 95 96 97 101 105 106 111 114 115 122 129 133 135 140 141 144 145 147 149	11	27 77 78 82 88 94 124 127 137 152 159	44

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
GABON	0		23	6 11 12 14 29 41 45 52 81 87 95 98 100 101 105 106 111 124 135 144 150 154 158	23
GERMANY	21	8 11 22 23 56 87 97 105 111 114 115 122 128 130 132 133 135 140 141 144 147	1	150	22
GHANA	0		30	1 8 11 14 22 23 45 50 58 64 81 87 88 89 90 92 94 98 100 105 106 107 108 111 115 117 148 149 150 151	30
GREECE	23	8 9 11 14 23 52 55 71 77 78 87 95 105 106 111 122 124 126 133 135 141 144 150	1	115	24
GRENADA	15	8 11 12 14 26 29 58 81 94 95 97 98 99 105 108	0		15
GUATEMALA	0		33	10 11 13 14 15 16 29 50 59 64 77 78 87 94 95 97 101 103 104 105 106 111 114 117 122 124 131 138 141 144 161 162 167	33
GUINEA	17	11 14 87 94 95 105 111 114 115 117 120 122 132 135 140 143 150	1	133	18
GUINEA-BISSAU	0		28	1 6 7 12 14 17 18 19 26 27 29 45 68 69 73 74 81 88 89 91 92 98 100 105 106 107 108 111	28
GUYANA	13	11 87 94 95 97 105 111 115 135 140 141 144 150	0		13

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
HAITI	0		19	12 14 17 24 25 29 42 45 77 78 81 87 90 98 100 105 106 107 111	19
HONDURAS	14	14 29 42 45 78 81 87 98 100 105 106 108 111 122	1	95	15
HUNGARY	18	14 52 77 78 87 95 101 111 115 122 124 135 140 145 163 164 166 167	2	24 165	20
ICELAND	5	11 87 105 111 144	1	122	6
INDIA	10	11 14 22 26 29 100 111 115 141 144	2	107 160	12
INDONESIA	5	29 98 100 106 144	1	45	6
IRAN, ISLAMIC REP. OF	4	95 106 111 122	2	14 105	6
IRAQ	22	8 14 19 22 23 77 78 81 94 95 105 106 107 111 115 118 122 132 135 137 140 152	8	11 42 88 89 144 145 150 167	30
IRELAND	15	8 11 14 22 23 29 44 87 98 105 122 124 132 144 147	0		15
ISRAEL	17	14 52 77 78 87 94 95 97 101 105 106 111 117 122 133 141 150	0		17
ITALY	25	8 11 14 22 23 44 55 71 77 78 87 92 95 97 105 114 115 124 132 135 141 143 144 145 150	5	94 106 111 117 122	30
JAMAICA	0		14	8 11 58 81 87 94 97 98 100 105 111 117 122 150	14
JAPAN	7	8 22 87 115 122 147 159	0		7
JORDAN	6	98 106 111 117 122 135	2	105 124	8

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
KENYA	13	11 14 94 97 105 132 134 135 140 141 143 144 146	0		13
KOREA, REPUBLIC OF	3	73 81 122	0		3
KUWAIT	0		6	52 87 105 106 111 117	6
KYRGYZSTAN	0		10	52 77 78 87 95 106 111 115 122 124	10
LATVIA	1	87	7	98 100 105 111 122 135 151	8
LEBANON	10	14 52 77 78 95 105 106 111 115 122	5	8 9 71 73 133	15
LESOTHO	0		6	5 11 14 45 87 98	6
LIBERIA	0		10	22 23 29 55 87 98 105 111 114 133	10
LIBYAN ARAB JAMAHIRIYA	0		16	14 29 52 81 88 89 95 98 100 105 111 118 121 122 130 131	16
LITHUANIA	0		2	14 24	2
LUXEMBOURG	12	2 11 14 29 55 56 87 88 105 130 132 135	15	8 9 22 23 53 68 69 73 74 77 78 92 108 147 166	27
MADAGASCAR	2	11 14	11	29 87 95 111 117 119 120 122 124 127 132	13
MALAWI	6	11 97 100 107 144 159	1	111	7
MALAYSIA	2	19 95	0		2
MALAYSIA (SABAH)	0		2	94 97	2
MALAYSIA (SARAWAK)	1	14	2	11 94	3
MALAYSIA (PENINSULAR)	1	11	0		1
MALI	7	11 14 52 87 95 105 111	0		7
MALTA	23	8 11 14 22 42 43 49 77 78 87 88 95 105 106 111 117 119 124 129 131 132 135 141	0		23

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
MAURITANIA	14	11 14 22 23 29 52 87 94 95 101 111 114 118 122	0		14
MAURITIUS	8	8 11 14 94 95 97 105 138	0		8
MEXICO	26	8 11 14 22 23 52 55 56 87 95 105 106 111 115 124 135 140 141 144 150 163 164 166 167 169 170	0		26
MONGOLIA	5	59 98 100 103 123	3	87 111 122	8
MOROCCO	12	11 14 22 52 55 94 101 105 106 111 122 145	0		12
MOZAMBIQUE	0		9	11 14 17 18 81 88 100 105 111	9
MYANMAR	6	11 14 17 22 52 87	0		6
NEPAL	0		4	14 100 111 131	4
NETHERLANDS	22	8 11 14 22 23 24 25 44 71 87 94 95 101 105 106 114 115 124 133 135 141 160	9	45 96 97 111 122 140 144 145 150	31
NEW ZEALAND	16	8 11 14 17 22 23 42 44 52 97 101 105 111 122 133 144	2	82 145	18
NICARAGUA	21	4 8 11 14 22 23 24 25 77 78 87 95 105 111 115 117 122 135 140 141 144	0		21
NIGER	11	11 14 29 87 95 105 111 117 119 135 156	0		11
NIGERIA	8	8 11 87 94 95 97 100 105	1	133	9

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
NORWAY	26	8 11 14 22 56 71 87 95 97 105 111 115 122 130 132 133 135 141 143 144 145 150 162 167 168 169	0		26
PAKISTAN	13	1 22 29 45 81 87 89 90 96 98 105 107 111	6	11 14 18 32 59 106	19
PANAMA	14	8 11 17 23 55 56 71 77 78 95 105 114 124 125	14	22 52 64 68 73 87 89 92 94 107 111 117 122 126	28
PAPUA NEW GUINEA	0		16	2 7 8 10 11 12 22 26 29 42 45 85 98 99 105 122	16
PARAGUAY	17	11 14 29 52 77 78 87 95 98 101 105 106 111 115 117 122 124	0		17
PERU	30	8 11 14 22 23 24 25 35 36 37 38 39 40 44 52 55 56 67 71 77 78 87 88 101 105 106 111 114 122 159	1	20	31
PHILIPPINES	11	23 77 87 88 94 95 105 111 122 141 144	0		11
POLAND	22	8 11 14 22 23 24 25 77 78 87 95 101 105 111 115 122 124 133 135 140 141 145	0		22
PORTUGAL	24	8 11 14 22 23 77 78 87 95 97 105 106 107 111 117 122 124 132 135 143 144 145 147 150	0		24
QATAR	2	81 111	0		2
ROMANIA	14	8 11 14 24 87 95 111 117 122 135 138 144 154 168	0		14

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
RUSSIAN FEDERATION	13	11 14 23 52 77 78 87 95 106 111 115 122 124	0		13
RWANDA	0		8	11 14 87 94 105 111 132 135	8
SAINT LUCIA	0		24	5 7 8 11 12 14 16 17 19 26 29 50 64 65 87 94 95 97 98 100 101 105 108 111	24
SAN MARINO	10	87 88 111 119 140 142 144 150 156 160	1	143	11
SAO TOME AND PRINCIPE	0		11	17 18 81 87 88 98 100 106 111 144 159	11
SAUDI ARABIA	4	14 105 106 111	0		4
SENEGAL	12	11 14 52 87 95 101 105 111 117 122 125 135	0		12
SEYCHELLES	7	5 8 16 26 87 99 105	6	2 10 11 29 58 108	13
SIERRA LEONE	6	8 88 95 105 111 144	4	22 87 94 101	10
SINGAPORE	5	8 11 22 81 94	0		5
SLOVAKIA	7	14 26 95 99 130 155 167	0		7
SLOVENIA	14	17 18 24 25 56 87 97 106 111 114 122 135 140 143	0		14
SOLOMON ISLANDS	0		13	8 11 12 14 19 26 29 42 45 81 94 95 108	13
SOMALIA	0		11	16 17 19 22 23 29 45 94 95 105 111	11
SOUTH AFRICA	2	19 42	0		2

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
SPAIN	42	8 11 14 16 22 23 24 25 44 55 73 77 78 87 88 92 94 95 96 97 101 102 105 106 111 113 114 115 117 122 124 132 135 140 141 144 145 150 151 163 164 166	0		42
SRI LANKA	7	8 10 11 95 106 115 135	0		7
SUDAN	7	29 95 98 105 111 117 122	0		7
SURINAME	12	11 14 87 94 95 101 105 106 122 135 144 150	0		12
SWAZILAND	9	11 14 87 94 95 101 105 111 144	1	160	10
SWEDEN	21	8 11 14 87 105 115 121 122 130 132 135 138 140 141 144 145 150 163 167 168 170	3	111 143 164	24
SWITZERLAND	15	8 11 14 23 87 105 111 115 119 132 141 150 162 163 168	0		15
SYRIAN ARAB REPUBLIC	24	11 14 18 19 29 52 87 88 94 95 96 98 101 105 106 107 111 115 117 118 124 129 135 144	0		24
TAJIKISTAN	0		12	14 23 52 77 78 87 95 106 111 115 122 124	12
TANZANIA, UNITED REPUBLIC OF	5	11 95 135 140 144	3	94 105 134	8
TANZANIA (TANGANYIKA)	3	88 101 108	0		3
TANZANIA (ZANZIBAR)	0		1	97	1
THAILAND	5	14 29 88 105 122	0		5
TOGO	8	11 14 87 95 100 111 143 144	0		8
TRINIDAD AND TOBAGO	0		5	87 97 98 105 111	5

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
TUNISIA	23	8 11 14 22 23 29 52 55 77 87 91 95 100 105 106 107 111 114 117 122 124 127 150	0		23
TURKEY	10	11 14 58 77 94 95 98 111 115 123	2	105 122	12
UGANDA	3	95 98 122	6	11 29 94 105 124 143	9
UKRAINE	13	11 14 23 52 77 78 87 95 106 111 115 122 124	1	133	14
UNITED ARAB EMIRATES	3	29 81 89	0		3
UNITED KINGDOM	28	8 11 22 23 24 25 44 56 82 87 92 97 99 101 102 105 114 115 122 124 126 133 135 140 141 144 147 150	0		28
UNITED STATES	5	55 105 144 147 160	0		5
URUGUAY	22	8 9 11 14 22 23 77 78 87 94 95 97 105 106 111 114 115 130 133 141 144 150	3	122 132 153	25
VENEZUELA	22	11 14 22 41 87 88 95 97 105 111 117 121 127 128 130 140 141 143 144 150 155 158	1	122	23
YEMEN	2	87 158	11	14 58 94 95 98 105 111 122 132 135 159	13
ZAIRE	0		16	11 12 14 29 81 88 89 94 95 98 100 102 117 121 150 158	16
ZAMBIA	15	11 45 89 95 97 105 111 117 122 124 135 141 144 148 150	1	159	16
ZIMBABWE	2	14 144	0		2

State Member	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
Other States					
NAURU	0		5	19 27 29 42 105	5
SAMOA	0		2	14 29	2

Apendix II. Statistical table of reports received on ratified Conventions as at 3 March 1995

Period	Reports requested	Reports received at the date requested		Reports received in time for the sesion of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1931-1932	447	-	-	406	90.8	423	94.6
1932-1933	522	-	-	435	83.3	453	86.7
1933-1934	601	-	-	508	84.5	544	90.5
1934-1935	630	-	-	584	92.7	620	98.4
1935-1936	662	-	-	577	87.2	604	91.2
1936-1937	702	-	-	580	82.6	634	90.3
1937-1938	748	-	-	616	82.4	635	84.9
1938-1939	766	-	-	588	76.8	-	-
1943-1944	583	-	-	251	43.1	314	53.9
1944-1945	725	-	-	351	48.4	523	72.2
1945-1946	731	-	-	370	50.6	578	79.1
1946-1947	763	-	-	581	76.1	666	87.3
1947-1948	799	-	-	521	65.2	648	81.1
1948-1949	806	134[1]	16.6	666	82.6	695	86.2
1949-1950	831	253	30.4	597	71.8	666	80.1
1950-1951	907	288	31.7	705	77.7	761	83.9
1951-1952	981	268	27.3	743	75.7	826	84.2
1952-1953	1026	212	20.6	840	81.8	917	89.3
1953-1954	1175	268	22.8	1077	91.7	1119	95.2
1954-1955	1234	283	22.9	1063	86.1	1170	94.8
1955-1956	1333	332	24.9	1234	92.5	1283	96.2
1956-1957	1418	210	14.7	1295	91.3	1349	95.1
1957-1958	1558	340	21.8	1484	95.2	1509	96.8
1958-1959	995[2]	200	20.4	864	86.8	902	90.6
1958-1960	1100	256	23.2	838	76.1	963	87.4
1959-1961	1362	243	18.1	1090	80.0	1142	83.8
1960-1962	1309	200	15.5	1059	80.9	1121	85.6
1961-1963	1624	280	17.2	1314	80.9	1430	88.0
1962-1964	1495	213	14.2	1268	84.8	1356	90.7
1963-1965	1700	282	16.6	1444	84.9	1527	89.8
1964-1966	1562	245	16.3	1330	85.1	1395	89.3
1965-1967	1883	323	17.4	1551	84.5	1643	89.6
1966-1968	1647	281	17.1	1409	85.5	1470	89.1
1967-1969	1821	249	13.4	1501	82.4	1601	87.9
1968-1970	1894	360	18.9	1463	77.0	1549	81.6
1969-1971	1992	237	11.8	1504	75.5	1707	85.6
1970-1972	2025	297	14.6	1572	77.6	1753	86.5
1971-1973	2048	300	14.6	1521	74.3	1691	82.5

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[1] First year for which this figure is available.

[2] As a result of a decision by the Governing Body, detailed reports were requested as from 1958-59 until 1976 only on certain ratified Conventions.

Period	Reports requested	Reports received at the date requested		Reports received in time for the sesion of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1972-1974	2189	370	16.5	1854	84.6	1958	89.4
1973-1975	2034	301	14.8	1663	81.7	1764	86.7
1974-1976	2200	292	13.2	1831	83.0	1914	87.0
-1977	1529[3]	215	14.0	1120	73.2	1328	87.0
-1978	1701	251	14.7	1289	75.7	1391	81.7
-1979	1593	234	14.7	1270	79.8	1376	86.4
-1980	1581	168	10.6	1302	82.2	1437	90.8
-1981	1543	127	8.1	1210	78.4	1340	86.7
-1982	1695	332	19.4	1382	81.4	1493	88.0
-1983	1737	236	13.5	1388	79.9	1558	89.6
-1984	1669	189	11.3	1286	77.0	1412	84.6
-1985	1666	189	11.3	1312	78.7	1471	88.2
-1986	1752	207	11.8	1388	79.2	1529	87.3
-1987	1793	171	9.5	1408	78.4	1542	86.0
-1988	1636	149	9.0	1230	75.9	1383	84.4
-1989	1719	196	11.4	1256	73.0	1409	81.9
-1990	1958	192	9.8	1409	71.9	1639	83.7
-1991	2010	271	13.4	1411	69.9	1544	76.8
-1992	1824	313	17.1	1194	65.4	1384	75.8
-1993	1906	471	24.7	1233	64.6	1473	77.2
-1994	2290	370	16.1	1573	68.7	-	-

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[3] As a result of a decision by the Governing Body (November 1976), detailed reports are now requested, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

II. Observations on the application of Conventions in non-metropolitan territories

(article 22 and article 35, paragraphs 6 and 8, of the Constitution)

A. GENERAL OBSERVATIONS

France

French Southern and Antarctic Territories

Further to its previous observations, the Committee notes the general comments made by the National Federation of Maritime Trade Unions (FNSM), of 17 January 1995, which repeats that no international Convention is applied on board ships registered in the French Southern and Antarctic Territories. The Government, in its response received on 20 February 1995, reiterates its previous statement that the standards contained in Conventions Nos. 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 111, 133, 134, 146 and 147 are either implemented directly under article 55 of the Constitution of the French Republic, or equivalent to those in the Overseas Labour Code, and do not need to be incorporated into any specific laws.

The Committee notes that the Government again refers to the Conseil d'Etat of the Republic and indicates that the latter has not yet made a decision upon the legality of registration and in particular on its conformity with the Conventions ratified by France.

Besides, the Committee notes the observation of the General Confederation of labour "Force ouvrière" (CGT-FO) communicated by the Government, which refers to a decision of the Supreme Court of Appeal of 12 January 1993. On the basis of the analysis of this decision, the CGT-FO considers that, as regards the ships registered in the territory, the Maritime Labour Code applies instead of the Overseas Labour Code.

The Committee once again recalls that it has already made several detailed comments under the Convention that France has declared applicable to the above territory, and has referred in particular to the large number of seafarers employed on ships registered in the territory.

The Committee again requests the Government to communicate to the Office detailed reports indicating the manner in which the above-mentioned Conventions are applied. The Committee also requests the Government to provide the opinion of the Conseil d'Etat as soon as it becomes available, together with any elements it considers useful in relation with the decision of the Supreme Court mentioned by the CGT-FO.

The Committee further notes with regret that the first reports due since 1992 on Conventions Nos. 53, 69, 74, 92, 133 and 134 have not been received. It trusts that the Government will discharge in future its obligation to supply the reports due on the application of these Conventions.

[The Government is asked to supply full particulars to the Conference at its 82nd Session on Conventions Nos. 8, 9, 16, 22, 23, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146 and 147.]

* * *

In addition, a request regarding certain points is being addressed directly to *France* (St. Pierre and Miquelon).

B. INDIVIDUAL OBSERVATIONS

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

United Kingdom

Anguilla

The Committee notes that the report of the Government contains no reply to its previous comments concerning the application to Anguilla of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amended section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons, and cargo.

The Committee again requests the Government to confirm whether section 37 of the 1979 Merchant Shipping Act has been extended to Anguilla.

British Virgin Islands

The Committee notes with satisfaction from the Government's reply that the United Kingdom Merchant Shipping Act 1970, as amended in 1979, has been applied to the British Virgin Islands by the Merchant Shipping Act Amendment 1981 (No. 422). Consequently, it is no longer possible to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons and cargo.

Falkland Islands (Malvinas)

The Committee notes with satisfaction the Government's reply in its report which confirms that the United Kingdom Merchant Shipping Act 1970 (Overseas Territories) Order 1988 applies section 15 of the above Act, as amended by section 37 of the United Kingdom Merchant Shipping Act 1979. Consequently it is no longer possible to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons and cargo.

Hong Kong

For several years the Committee has been drawing the Government's attention to the need to amend the existing legislation to eliminate any restrictions under the United Kingdom Merchant Shipping Act, 1894 (applicable to Hong Kong) regarding the unemployment indemnity of seamen who did not make reasonable efforts to save the ship and the persons and property carried in it. In its reply the Government states that the Seafarers Bill will remove such restrictions, which in practice have never been invoked, and that it is expected to be enacted at the end of 1994. The Committee would appreciate receiving a copy of the new legislation once enacted.

Montserrat

The Committee notes that the report of the Government contains no reply to its previous comments concerning the application to Monserrat of section 37 of the 1979 United Kingdom Merchant Shipping Act, which amended section 15 of the 1970 United Kingdom Merchant Shipping Act, removing the possibility to deprive seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons, and cargo.

The Committee again requests the Government to confirm whether section 37 of the 1979 Merchant Shipping Act has been extended to Montserrat.

* * *

Information supplied by *Denmark* (Faeroe Islands) in answer to a direct request has been noted by the Committee.

Convention No. 13: White Lead (Painting), 1921

Requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon).

Convention No. 14: Weekly Rest (Industry), 1921

Requests regarding certain points are being addressed directly to *Denmark* (Greenland), the *Netherlands* (Aruba) and the *United Kingdom* (Hong Kong).

Information supplied by *France* (French Polynesia) and the *United Kingdom* (Anguilla) in answer to a direct request has been noted by the Committee.

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

A request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 17: Workmen's Compensation (Accidents), 1925

Netherlands

Aruba

For a number of years the Committee has been drawing the Government's attention to the fact that the national legislation does not contain provisions giving effect to *Article 7 of the Convention*, which provides for additional compensation to the injured workman who must have the constant help of another person. In this connection the Committee notes from the Government's reports on Convention No. 121 which contain a similar provision that this question is being studied since 1986. The Committee therefore once again asks the Government to indicate the measures taken or contemplated to bring the law and practice in conformity with Article 7 of the Convention.

[The Government is asked to report in detail in 1996.]

Netherlands Antilles

Article 7 of the Convention. In reply to the Committee's previous comments, the Government states that it now fully acknowledges the need to bring the legislation formally into conformity with this provision of the Convention. It has prepared a draft Ordinance to ensure additional compensation to the occupationally injured worker who needs the constant help of another person, and will be able to report on the progress of the revision of the Antillean Ordinance regulating accident benefits (PB 1966, No. 14).

The Committee notes this information with interest. It trusts that the draft Ordinance will be adopted soon and that the Government will supply a copy of it, when adopted.

United Kingdom

Isle of Man

Articles 9 and 10 of the Convention. In reply to the Committee's previous comments concerning the participation by victims of industrial accidents in the cost of drugs, medicines and appliances prescribed for out-patients, the Government states that the Isle of Man is content to follow and adopt United Kingdom practice in this area and that the Government believes that the existing arrangements are satisfactory in terms of assisting, amongst others, those people who have sustained an injury as a result of an occupational accident and who have difficulty in meeting the cost of prescribed charges. In this connection, the Committee wishes to point out that any provision laying down participation by victims of industrial accidents — irrespective of their resources — in the cost of pharmaceutical aid and surgical appliances is contrary to the Convention. It therefore hopes that the Government will reconsider its position so as to ensure the application of the Convention on this point. It asks the Government to refer in this respect also to the observation concerning the application of Convention No. 17 by the United Kingdom.

* * *

In addition, requests regarding certain points are being addressed directly to the *United Kingdom* (Jersey, St. Helena).

Convention No. 22: Seamen's Articles of Agreement, 1926

France

French Guiana

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

Guadeloupe

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

Martinique

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

New Caledonia

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

Réunion

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

St. Pierre and Miquelon

Article 9, paragraph 1, of the Convention. See under Convention No. 22, France.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Polynesia, French Southern and Antarctic Territories) and the *United Kingdom* (Anguilla, Jersey).

Convention No. 23: Repatriation of Seamen, 1926

Requests regarding certain points are being addressed directly to *France* (French Southern and Antarctic Territories) and the *United Kingdom* (Anguilla).

Convention No. 24: Sickness Insurance (Industry), 1927

A request regarding certain points is being addressed directly to the *United Kingdom* (Guernsey).

Convention No. 25: Sickness Insurance (Agriculture), 1927

A request regarding certain points is being addressed directly to the *United Kingdom* (Guernsey).

Convention No. 29: Forced Labour, 1930

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

A request regarding certain points is being addressed directly to *France* (St. Pierre and Miquelon).

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

United Kingdom

Gibraltar

In its previous comments, the Committee drew the Government's attention to the fact that (1) the schedule of occupational diseases annexed to the Employment Injuries Insurance (Occupational Diseases) (Amendment) Regulations restricts the activities likely to cause anthrax infection to the loading, unloading or transport of animal products or residues or contact with animals infected with anthrax, whereas the Convention is drawn up in more general terms and also includes the loading, unloading or transport of merchandise; (2) the national schedule does not mention poisoning by certain halogen derivatives of hydrocarbons of the aliphatic series, whereas the Convention covers all these substances; (3) the national schedule covers only certain disorders caused by ionizing radiation, whereas the Convention covers *all* pathological manifestations due to X-rays, radium and other radioactive substances.

In its reply, the Government states that the Local Health Committee continues to consider that Gibraltar should follow the United Kingdom on the points raised pertaining to anthrax infection and to disorders caused by ionizing radiation. It adds, however, that it will be taking the necessary steps to amend the said Regulations so as to conform with the Convention. The Committee notes this declaration with interest. It therefore once again hopes that the Government will not fail to complete in the near future the national schedule of occupational diseases in respect of these above-mentioned points.

Convention No. 44: Unemployment Provision, 1934

France

New Caledonia

Article 10. In its previous comments, the Committee requested the Government to provide information on the practical application of section 19 of Decision No. 533 of 2 February 1983, which, according to the information previously supplied, permits suspension of unemployment benefits for three months if the beneficiary refuses without legitimate reason a job offered by the Labour Office. As the Government's report does not contain the requested information, the Committee once again requests the Government to supply copies of any regulatory or administrative provisions which define what constitutes a legitimate reason under section 19 of Decision No. 533, and also copies of any relevant judicial or administrative decisions.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (St. Pierre and Miquelon) and the *United Kingdom* (Jersey).

Convention No. 53: Officers' Competency Certificates, 1936

France

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

Convention No. 56: Sickness Insurance (Sea), 1936

A request regarding certain points is being addressed directly to the *United Kingdom* (Guernsey).

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Netherlands

Netherlands Antilles

The Committee notes with satisfaction that, even though the re-evaluation of the Labour Regulation has not yet resulted in setting a minimum age of 15 years for admission to employment for all kinds of work, as far as seafarers are concerned the Decrees of 27 August 1986 and 1 September 1986 set a minimum age of 16 years and thus ensure the implementation of the Convention.

* * *

In addition, a request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 63: Statistics of Wages and Hours of Work, 1938

A request regarding certain points is being addressed directly to *France* (St. Pierre and Miquelon).

Convention No. 68: Food and Catering (Ships' Crews), 1946

A request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 69: Certification of Ships' Cooks, 1946

France

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

Convention No. 73: Medical Examination (Seafarers), 1946

A request regarding certain points is being addressed to *France* (French Southern and Antarctic Territories).

Convention No. 74: Certification of Able Seamen, 1946

France

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Requests regarding certain points are being addressed directly to *France* (French Polynesia, St. Pierre and Miquelon).

Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946

A request regarding certain points is being addressed directly to *France* (St. Pierre and Miquelon).

Convention No. 81: Labour Inspection, 1947

France

French Guiana

See under Convention No. 81, France.

French Polynesia

The Committee notes that at its 261st Session (November 1994) the Governing Body set up a tripartite committee to examine a representation submitted by the World Federation of Trade Unions (WFTU) under article 24 of the Constitution alleging the non-observance by France of Conventions Nos. 81 and 82.

Guadeloupe

See under Convention No. 81, France.

Martinique

See under Convention No. 81, France.

Réunion

See under Convention No. 81, France.

St. Pierre and Miquelon

See under Convention No. 81, France.

Convention No. 82: Social Policy (Non-Metropolitan Territories), 1947

France

French Polynesia

The Committee notes that at its 261st Session (November 1994) the Governing Body set up a tripartite committee to examine a representation made by the World Federation of Trade Unions (WFTU) under article 24 of the Constitution, alleging non-observance by France of Conventions Nos. 81 and 82.

In accordance with its normal practice, the Committee is suspending its comments on the application of the Convention until the Governing Body adopts the conclusions and recommendations of the above tripartite committee.

Convention No. 87: Freedom of Association and Protection of the Right to Organize, 1948

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba, Netherlands Antilles) and the *United Kingdom* (Isle of Man, Montserrat, St. Helena).

Convention No. 92: Accommodation of Crews (Revised), 1949

France

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

* * *

In addition, requests regarding certain points are being addressed directly to the *United Kingdom* (Hong Kong, Isle of Man).

Convention No. 94: Labour Clauses (Public Contracts), 1949

Requests regarding certain points are being addressed directly to *France* (French Polynesia), the *Netherlands* (Aruba, Netherlands Antilles) and the *United Kingdom* (Anguilla).

Convention No. 95: Protection of Wages, 1949

Requests regarding certain points are being addressed directly to *France* (New Caledonia), the *Netherlands* (Aruba) and the *United Kingdom* (Montserrat).

Convention No. 97: Migration for Employment (Revised), 1949

A request regarding certain points is being addressed directly to the *United Kingdom* (Hong Kong).

Convention No. 98: Right to Organize and Collective Bargaining, 1949

France

French Southern and Antarctic Territories

The Committee notes the Government's report.

It recalls that the comments made by the National Federation of Seafarers' Unions (FNSM) concerned a Decree and an Order of 4 August 1993 on registration in the French Southern and Antarctic Territories (TAAF) amending Decree No. 87.190 of 20 March 1987 and the Order of 20 March 1987. According to the FNSM, these provisions were extended to almost all French vessels, and the treatment on board these vessels was discriminatory for foreign seafarers from poor countries, in breach of ILO Conventions.

In its previous observation, the Committee noted the Government's indication that the Overseas Labour Code applied to seafarers on vessels registered in the French Southern and Antarctic Territories but that there were no collective agreements because the social partners had failed to conclude any. It had nevertheless specified that the Secretary of State for the Sea was endeavouring to obtain a commitment to negotiation in order to establish enterprise-level collective agreements. The Government had also indicated that the question of the legality of the Decree of 4 August 1993 with respect to the international Conventions ratified by France, was before the High Court (Conseil d'Etat).

In its latest report, the Government indicates that it will inform the Committee of the contents of the judgement of the High Court as soon as it is handed down. It adds that a draft law on the modernization of transport which contains provisions concerning the licensing of ships in the TAAF will be debated at the next parliamentary session and that it will ensure greater legal protection for the status of seafarers on board vessels licensed in the TAAF.

The Committee reminds the Government once again that on ratifying the Convention it undertook to encourage and promote the development and utilization of machinery for voluntary collective bargaining as a means of regulating the terms and conditions of employment of seafarers. It again asks the Government to indicate in its next report whether the call for collective negotiations made by the Secretary of State for the Sea to the social partners in the maritime sector has led to the conclusion of collective agreements on board vessels registered in the French Southern and Antarctic Territories and, if so, to provide copies of any such agreements. Moreover, it requests the Government to provide a copy of the judgement handed down by the High Court on the issue of the Decree of 4 August 1993, as well as the draft law referred to by the Government in its latest report.

The Committee hopes that the Government will make every effort to provide the information requested in the very near future.

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In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Hong Kong).

Convention No. 100: Equal Remuneration, 1951

Requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon) and the *United Kingdom* (Gibraltar).

Convention No. 101: Holidays with Pay (Agriculture), 1952

Requests regarding certain points are being addressed directly to *France* (French Polynesia, New Caledonia) and the *Netherlands* (Aruba).

Information supplied by the *United Kingdom* (Hong Kong) in answer to a direct request has been noted by the Committee.

Convention No. 105: Abolition of Forced Labour, 1957

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Requests regarding certain points are being addressed directly to *Denmark* (Greenland) and the *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 108: Seafarers' Identity Documents, 1958

A request regarding certain points is being addressed directly to *France* (French Southern and Antarctic Territories).

Convention No. 111: Discrimination (Employment and Occupation), 1958

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Information supplied by *France* (French Guiana, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon) and *New Zealand* (Tokelau) in answer to a direct request has been noted by the Committee.

Convention No. 113: Medical Examination (Fishermen), 1959

Information supplied by the *Netherlands* (Aruba) in answer to a direct request has been noted by the Committee.

Convention No. 115: Radiation Protection, 1960

Requests regarding certain points are being addressed directly to *France* (French Polynesia) and the *United Kingdom* (Hong Kong).

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980]

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 122: Employment Policy, 1964

Requests regarding certain points are being addressed directly to *France* (St. Pierre and Miquelon) and the *Netherlands* (Aruba, Netherlands Antilles).

Convention No. 124: Medical Examination of Young Persons (Underground Work), 1965

Information supplied by *France* (New Caledonia) in answer to a direct request has been noted by the Committee.

Convention No. 127: Maximum Weight, 1967

France

New Caledonia

The Committee notes the information supplied by the Government in its last report.

Articles 3 and 7 of the Convention. Further to its previous comments noting the absence of legislation to limit the weight of loads which can be transported manually by adult men, women and young workers, the Committee notes with interest the adoption of Order No. 1211-T of 19 March 1993 under section 5 of Decision No. 34/CP of 23 February 1989 respecting minimum health and safety requirements for the manual handling of loads involving risks to workers, particularly to the back and lumbar regions. Section 3 of the Order states that "where recourse to manual handling is inevitable and the mechanical aids referred to in section 2(1) cannot be used, a worker shall only be allowed to carry regularly loads over 55 kg if he has been found fit by the occupational physician; it is prohibited to cause a single man to carry any load over 105 kg". Section 4 of the above Order provides that young workers under 18 years of age and women employed in the establishments referred to in section 1 of Decision No. 34/CP of 23 February 1989 may not carry, pull or push either inside or outside such establishments loads heavier than the weight limits established for the carrying of loads, of 15 kg for male workers of 14 or 15 years of age, 20 kg for those of 16 or 17 years of age, and 8, 10 and 25 kg respectively for women workers of 14, 16 and 18 years of age.

The Committee notes that this Order establishes limits which did not exist before. However, with regard to the maximum weight established for the carrying of loads by adult males, the Committee notes that the absolute limit is set at 105 kg and that a worker can even be permitted to carry *regularly* loads heavier than 55 kg if he has been found fit by the occupational physician.

The Committee is concerned by the question of the basis on which the occupational physician could reach the conclusion that a worker would be fit to carry manually on a regular basis loads over 55 kg without endangering his health or safety. In this respect, the Committee draws attention to Recommendation No. 128 concerning the maximum permissible weight to be carried by one worker, which states in Paragraph 14 that, where the maximum permissible weight which may be transported manually by one adult male worker is more than 55 kg, measures should be taken as speedily as possible to reduce it to that level. The Committee also refers to the publication *Maximum weight in load lifting and carrying* in the Occupational Safety and Health Series of the International Labour Office, in which it is indicated that 55 kg is the limit recommended from the ergonomic point of view for the admissible weight of loads to be transported *occasionally* by an adult male worker between 19 and 45 years of age. Similarly, it states that 15 kg is the limit recommended from an ergonomic point of view for the load permitted to be lifted and transported occasionally by adult women. The Committee hopes that the Government will keep the question under examination with a view to reducing the permitted weight of loads which may be carried by adult workers of both sexes and that it will indicate any measure taken to this effect.

* * *

In addition, a request regarding certain points is being addressed directly to *France* (New Caledonia).

Convention No. 131: Minimum Wage Fixing, 1970

France

Guadeloupe

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted the comments made by the General Confederation of Labour "Force-ouvrière" (CGT-FO), on the application of the Convention in Guadeloupe, which were forwarded by the Government with its report. It noted that the Government has made no observations on the CGT-FO's comments, according to which it would be fair if the minimum wage (SMIC) applicable in that Department were the same as that in metropolitan France, particularly since, according to the information available to the CGT-FO, in practice the payment of the SMIC could be subject to practices which consist of combining social benefits with a wage which is lower than the SMIC. Through these practices, it is possible to reach a level of overall remuneration which is higher than the SMIC, but which is not subject to social contributions. The CGT-FO considers that the existence of this practice tends to show that the level of the SMIC in Guadeloupe is not such as to ensure a decent standard of living.

The Committee requests the Government to make its observations on these comments. Furthermore, it is addressing a request directly to the Government on other points.

The Committee hopes again that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (Guadeloupe) and the *Netherlands* (Aruba).

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

France

French Guiana

See under France.

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

Guadeloupe

See under France.

Martinique

See under France.

Réunion

See under France.

* * *

In addition, a request regarding certain points is being addressed directly to the *United Kingdom* (Hong Kong).

Convention No. 134: Prevention of Accidents (Seafarers), 1970

France

French Southern and Antarctic Territories

The Committee refers to its general observation for the territories.

The Committee notes with regret that the first report that was due in 1992 has not yet been received. It hopes the Government will meet this obligation by submitting a detailed and complete first report in accordance with the report form approved by the Governing Body of the ILO.

Convention No. 135: Workers' Representatives, 1971

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 137: Dock Work, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 138: Minimum Age, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 140: Paid Educational Leave, 1974

A request regarding certain points is being addressed directly to the *United Kingdom* (Jersey).

Convention No. 141: Rural Workers' Organizations, 1975

A request regarding certain points is being addressed directly to *France* (New Caledonia).

Information supplied by the *Netherlands* (Aruba) in answer to a direct request has been noted by the Committee.

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon) and the *Netherlands* (Aruba).

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to *France* (French Southern and Antarctic Territories) and the *Netherlands* (Aruba).

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

A request regarding certain points is being addressed to *France* (French Souther and Antarctic Territories).

Convention No. 149: Nursing Personnel, 1977

Requests regarding certain points are being addressed directly to *France* (Frenc Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierr and Miquelon).

Convention No. 151: Labour Relations (Public Service), 1978

United Kingdom

Hong Kong

The Committee notes the observation of the Hong Kong Confederation of Trac Unions (HKCTU) and the reply of the Government thereto.

1. *Article 7 of the Convention.* The HKCTU indicates that as regards the possibili for staff representatives to participate in the determination of their employme conditions, staff associations have to be admitted first in order to gain representation i the consultation machinery at the central level. The Government states that representatio in central consultative councils is not by appointment although it is correct that sta associations or unions have to be admitted first in order to gain such representation. Th Government points out that the process of gaining admission is objective, transparent an involves consultation with existing staff side members of concerned central council Unions will be admitted to central councils as long as they meet objective numeric criteria which are designed to ascertain that they are representative and compete enough to perform the role of central consultative council members (500 or 25 per cen at the departmental level).

The Committee thus observes that appropriate consultative machinery is in place the central level which allows staff representatives to participate in the determination civil service employment matters.

2. *Article 8.* The Committee once again notes the HKCTU's statement that it do not believe that the principles of the Convention pertaining to the settlement of disput in the public services are applied by the Government in practice which denies civ servants the right to an independent resolution of their disputes. In this respect, th HKCTU refers to a recent pay dispute between the Government and the civil serva workforce in which all the unions had asked for arbitration but the Government ha refused it even after the Legislative Council had passed a resolution for arbitration.

The Government reiterates that where a dispute between the Government and th staff side cannot be resolved through negotiation, the matter can be referred to a independent committee of inquiry under the 1968 Agreement made between th Government and the three main staff associations. However, it is laid down in th Agreement that such a committee will not be invoked on a matter which is trivial, settled public policy, or affects the security of Hong Kong. The Government indicate in this respect, that the pay dispute cited by the HKCTU concerns a settled public policy and is outside the purview of arbitration by a committee of inquiry. It is therefore not appropriate to refer to this case as an illustration that civil servants are denied the opportunity of an independent resolution to disputes.

The Committee would once again recall that under Article 8, the settlement of disputes in the public service should be sought "through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, *established in such a manner as to ensure the confidence of the parties involved*". The Committee would therefore request the Government to ensure in future that the principles of the Convention will be applied to the settlement of such disputes.

[The Government is asked to report in detail in 1996.]

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the *United Kingdom* (Gibraltar, Jersey).

Appendix. Receipt of detailed reports on ratified Conventions (non-metropolitan territories) as at 3 March 1995

(Article 22 and 35 of the Constitution)

Countries and Territories	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
GRAND TOTAL	352		124		476
AUSTRALIA					
NORFOLK ISLAND	4	11 87 105 122	2	142 160	6
TOTAL	4		2		6
DENMARK					
FAEROE ISLANDS	7	8 11 14 52 87 105 106	0		7
GREENLAND	3	87 105 122	3	11 14 106	6
TOTAL	10		3		13
FRANCE					
FR. SOUTHERN & ANTARCTIC TER.	0		20	8 9 16 22 23 53 58 68 69 73 74 87 92 98 108 111 133 134 146 147	20
FRENCH GUIANA	22	8 14 22 23 24 52 56 71 81 87 95 101 105 106 111 114 115 133 135 141 144 145	13	13 32 55 58 89 94 100 112 120 124 129 136 149	35
FRENCH POLYNESIA	21	11 14 22 23 24 44 52 55 56 71 77 78 82 87 95 101 122 124 141 144 145	7	29 94 105 106 111 115 149	28
GUADELOUPE	23	8 11 14 22 23 24 52 56 71 81 87 95 101 105 106 111 114 115 133 135 141 144 145	14	13 32 55 58 89 94 100 112 120 124 129 131 136 149	37
MARTINIQUE	23	8 11 14 22 23 24 52 56 71 81 87 95 101 105 106 111 114 115 133 135 141 144 145	13	13 32 55 58 89 94 100 112 120 124 129 136 149	36

Countries and Territories	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
NEW CALEDONIA	26	11 14 22 23 24 44 52 55 56 71 77 78 82 87 94 95 101 105 106 111 115 122 124 141 144 145	0		26
REUNION	23	8 11 14 22 23 24 52 56 71 81 87 95 101 105 106 111 114 115 133 135 141 144 145	13	13 32 55 58 89 94 100 112 120 124 129 136 149	36
ST. PIERRE AND MIQUELON	18	11 14 22 23 24 52 81 87 95 101 105 106 111 115 122 141 144 145	18	13 44 55 56 58 71 77 78 82 88 89 94 96 100 120 124 129 149	36
TOTAL	156		98		254
NETHERLANDS					
ARUBA	19	12 17 29 45 81 87 88 89 90 113 114 121 129 135 138 140 142 145 147	18	8 11 14 22 23 25 94 95 101 105 106 122 126 131 137 141 144 146	37
NETHERLANDS ANTILLES	14	8 11 14 22 23 25 58 87 94 95 101 105 106 122	0		14
TOTAL	33		18		51
NEW ZEALAND					
TOKELAU	3	82 105 111	0		3
TOTAL	3		0		3
UNITED KINGDOM					
ANGUILLA	12	8 11 14 22 23 82 87 94 97 101 105 140	0		12
BERMUDA	11	11 22 23 82 87 94 105 115 133 135 147	0		11
BRITISH VIRGIN ISLANDS	9	8 11 14 23 82 87 94 97 105	0		9
FALKLAND ISLANDS (MALVINAS)	9	8 11 14 22 23 82 87 105 141	0		9
GIBRALTAR	13	8 11 22 23 44 81 82 87 105 133 135 150 160	0		13

Countries and Territories	*Reports received*		*Reports not received*		*Grand total*
	Total	*Conventions Nos.*	*Total*	*Conventions Nos.*	
GUERNSEY	15	8 11 24 25 44 56 87 97 105 114 115 122 135 141 150	1	22	16
HONG KONG	20	8 11 14 22 23 82 87 92 97 98 101 105 115 122 124 133 141 144 150 160	0		20
ISLE OF MAN	15	8 11 22 23 24 25 44 56 87 92 97 101 105 122 150	0		15
JERSEY	12	8 11 22 24 25 44 56 87 97 105 115 140	0		12
MONTSERRAT	8	8 11 14 82 95 97 98 105	1	87	9
ST. HELENA	6	8 11 14 82 87 150	1	105	7
TOTAL	130		3		133
UNITED STATES					
AMERICAN SAMOA	3	55 144 147	0		3
GUAM	3	55 144 147	0		3
NORTHERN MARIANA ISLANDS	2	144 147	0		2
PALAU	2	144 147	0		2
PUERTO RICO	3	55 144 147	0		3
UNITED STATES VIRGIN ISLANDS	3	55 144 147	0		3
TOTAL	16		0		16

III. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference

(article 19 of the Constitution)

Afghanistan

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly provide information on the Conventions and Recommendations adopted at the 71st, 72nd, 74th, 75th and 76th Sessions of the Conference, which have already been submitted to the governmental bodies concerned and required by the memorandum adopted by the Governing Body (points I, II and III of the questionnaire). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions have been submitted.

Algeria

The Committee notes with regret that, this year once again, the Government has not answered the observations it has been making since 1991. It recalls that the instruments adopted at the 65th to the 72nd and at the 75th Sessions of the Conference, which have been sent to the General Secretariat of the Government and to the President of the Republic, should be submitted, as soon as circumstances allow, to the People's National Assembly which is the body empowered to issue general rules relating to labour law under article 115 of the Algerian Constitution. The Committee hopes that the Government will shortly indicate whether the instruments adopted at the 74th, 76th, 77th, 78th and 79th Sessions have also been submitted. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Antigua and Barbuda

With reference to its previous observations, the Committee notes from the information supplied by the Government that none of the instruments adopted by the Conference have been submitted to the competent authorities. It recalls that the instruments adopted at the 68th Session of the Conference, which were submitted to the Cabinet, should also have been submitted, in accordance with article 19(5)(b) and (6)(b) of the Constitution of the ILO, to the authorities which are empowered to legislate. The Committee nevertheless trusts that the Government will submit the above instruments to the legislative body, as well as the instruments adopted at the 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference. The Committee recalls that the obligation to submit does not imply that governments must propose the ratification of the Conventions or the acceptance of the Recommendations under consideration. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities.

Bangladesh

With reference to its previous comments, the Committee notes the information supplied by the Government in its report to the effect that the instruments adopted at the

71st, 72nd, 74th, 75th, 76th, 77th, 78th and 79th Sessions of the Conference are in the process of being submitted to the competent authority. In the absence of any further information, the Committee trusts that the Government will indicate in the near future that these instruments have been submitted and that it will supply the information and documents concerning them that are requested in the memorandum adopted by the Governing Body. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 70th to 80th Sessions of the Conference have been submitted. The Committee wishes to recall that a clear distinction should be drawn between the terms "submission" and "ratification". The former is an obligation of a general nature which applies to both Conventions and Recommendations. However, it does not imply that governments are under the obligation to ratify the Convention or accept the Recommendation in question. The authority competent to receive submissions is therefore not that vested with the power to ratify but the authority empowered to legislate or take other measures to give effect to the Conventions and Recommendations.

Belize

With reference to its previous observation, the Committee notes with interest from information supplied by the Government that the instruments adopted from the 69th to the 76th Sessions of the Conference have been submitted to the competent authority. The Committee also notes that the Government is presently in the process of submitting to the competent authority the instrument, adopted from the 77th to 79th Sessions of the Conference.

Consequently, the Committee hopes that the Government will shortly be in a position to state that the instruments adopted from the 77th to the 79th Sessions of the Conference have been submitted to the National Assembly which is empowered to legislate by virtue of Articles 62 and 69 of the National Constitution, and that it will supply in this connection the information and documents requested in the Memorandum adopted by the Governing Body. The Committee would also be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Brazil

The Committee notes with regret that the Government has once again failed to reply to its previous observations, in which it noted that a number of instruments (Conventions Nos. 128-130, 149-151, 156 and 157) would shortly be examined by the tripartite committees with a view to their submission to Congress. The Committee therefore trusts that the Government will submit the above instruments to Congress, as well as those which were adopted at the 52nd, 78th, 79th and 80th Sessions of the Conference.

Bulgaria

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will soon provide information on the instruments adopted at the 77th, 78th and 79th Sessions of the Conference, which have been noted by the National Assembly. It hopes that the Government will indicate whether the instruments have been submitted to the competent authorities and it also hopes that the Government will shortly provide the information requested in the Memorandum adopted by the Governing Body (point II(a) and (b) of the questionnaire). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Cambodia

Further to its previous observation, the Committee notes the information supplied by the Government in its report, and the discussions at the Conference Committee in 1994 concerning the reasons for the delay in the submission to the competent authorities of the instruments adopted by the Conference.

It hopes that the Government will soon supply information concerning the submission to the competent authorities of the instruments adopted by the Conference.

Central African Republic

Further to its previous observation, the Committee notes the statement made by a Government representative at the Conference Committee in 1994 concerning the difficulties that have prevented the instruments adopted by the Conference from being submitted to the competent authority.

It trusts that the Government will shortly indicate that the instruments adopted at the 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities and that it will provide, for the above instruments and those adopted at the 65th, 69th, 70th, 71st, 72nd and 74th Sessions, which have already been submitted, the information and documents required by the memorandum adopted by the Governing Body (points I, II and III of the questionnaire). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Chad

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will shortly indicate that the instruments adopted at the 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities. The Committee hopes that the Government will continue its efforts to secure the submission of these instruments. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Congo

With reference to its previous comments, the Committee notes the information supplied by the Government to the effect that the process of the submission to the competent authorities has been commenced and that a file concerning the instruments adopted by the Conference which have not yet been submitted to the competent authorities has been transmitted to the General Secretariat of the Government, which will submit it to the next session of the National Assembly. The Committee trusts that the Government will indicate in the near future that the instruments adopted at the 60th, 61st, 62nd, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference, and the remaining instruments adopted at the 54th, 55th, 58th, 63rd and 67th Sessions (Conventions Nos. 137, 148 and 156 and Recommendations Nos. 135 to 142, 145, 156, 163, 164 and 165) have been submitted to the competent authorities.

Costa Rica

With reference to its previous observation, the Committee notes the statement made by a government representative before the Conference Committee in 1994 to the effect that the Government formally undertook to send at the earliest possible date information on the manner in which it had met its constitutional obligation to submit instruments. The Committee trusts that the Government will shortly indicate that the instruments adopted at the 71st, 72nd, 74th, 76th and 77th Sessions of the Conference have been submitted to the competent authorities, since the first submission of these instruments was quashed owing to procedural flaws, according to the Government's report. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted. The Committee recalls that the obligation to submit the instruments adopted by the Conference does not imply an obligation for governments to ratify Conventions or accept Recommendations.

Djibouti

The Committee notes with regret that once again this year the Government has not replied to its previous observations for several years. It trusts that the Government will soon indicate that the instruments adopted at the 66th, 68th, 69th, 70th, 74th, 75th, 76th and 77th Sessions of the Conference have been submitted to the competent authorities and that it will provide, both for the above instruments and for those adopted at the 71st and 72nd Sessions, the information and documents called for in the Memorandum adopted by the Governing Body. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Ecuador

With reference to its previous comments, the Committee notes the information supplied by the Government in its report, to the effect that studies will begin this year for the submission to the competent authorities of the instruments adopted at the 74th Session of the Conference. Furthermore, the Committee notes that the instruments adopted at the 75th, 77th, 78th and 79th Sessions of the Conference have not yet been submitted to the National Congress. The Committee hopes that the Government will shortly indicate that the above instruments have been submitted to Congress. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have also been submitted.

El Salvador

With reference to its previous comments, the Committee notes the statement made by a government representative before the Conference Committee in 1994, and the subsequent discussion. The Committee hopes that the Government will shortly indicate that the instruments adopted at the 62nd, 65th, 66th, 67th, 68th, 70th, 72nd, 74th, 75th, 76th and 77th Sessions of the Conference, and the remaining instruments from the 63rd, 64th, 69th and 71st Sessions (Conventions Nos. 148, 151 and 161; Recommendations Nos. 156, 157, 158, 159, 167 and 171), have been submitted to the competent authorities and that it will provide in respect of these instruments the documents and information requested in the memorandum adopted by the Governing Body (points II(a), (b) and (c), and III of the questionnaire). Furthermore the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Guatemala

The Committee notes that the Government has not replied to its previous observation. It hopes that it will soon report that the other instruments adopted at the 75th Session of the Conference (Convention No. 168 and Recommendation No. 176), and the instrument adopted at the 76th Session are shortly to be submitted to the competent authorities.

With regard to the instruments adopted at the 74th Session (Maritime) the Government indicates that their ratification would serve no purpose since Guatemala has no merchant fleet. The Committee wishes to recall in this respect that the obligation, as laid down in the ILO Constitution, to submit the instruments adopted by the Conference to the competent authority, applies to all Conventions and Recommendations without exception. Furthermore, this obligation does not imply an obligation on a government's part to ratify or apply the instruments in question. Consequently, the Committee hopes that the Government will shortly indicate that it has submitted the above-mentioned instruments to Congress.

In addition, the Committee would be grateful if the Government would state whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions have been adopted.

Guinea

The Committee notes with regret that once again this year the Government has not replied to the observations that it has been making since 1991. It hopes that the Government will soon provide, in respect of the instruments adopted from the 68th to the 75th Sessions of the Conference, which have been submitted to the competent authorities, the information requested in the Memorandum adopted by the Governing Body (points II(b) and III of the questionnaire). Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 76th, 77th, 78th, 79th and 80th Sessions of the Conference have been submitted.

Guyana

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. It also notes that the instruments adopted at the 74th, 75th, 76th and 77th Sessions of the Conference are in the process of being submitted. It hopes that the Government will shortly indicate that the instruments adopted at the above sessions of the Conference have been submitted to Parliament. Furthermore, the Committee requests the Government to indicate whether the instruments adopted at the 78th, 79th and 80th Sessions have been submitted.

Haiti

With reference to its previous observation, the Committee notes the information supplied by the Government concerning the delay in the submission of the instruments adopted by the Conference. The Committee hopes that the Government will soon be able to indicate that the remaining instruments adopted at the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164), the instruments adopted at the 68th Session, the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176) and all the instruments adopted at the 76th, 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Honduras

The Committee regrets to note that the Government has not replied to its previous observation. It hopes that the Government will shortly provide, in respect of the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference, which have been submitted, the information requested in the memorandum adopted by the Governing Body (points II(b) and (c) and III of the questionnaire), together with a copy of the document whereby the instruments adopted at the 75th Session was submitted. The Committee hopes that the Government will also provide a copy of the letter whereby the instruments adopted at the 67th Session was submitted to the National Assembly by the President of the Republic, and a copy of the letter whereby the Ministry of Foreign Affairs submitted to the above Assembly the instrument adopted at the 70th Session, and that it will state whether the remaining instruments from the 74th Session and the instruments adopted at the 76th, 77th and 78th Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th and 80th Sessions of the Conference have been submitted.

Hungary

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will shortly indicate that the instruments adopted at the 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to Parliament. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Italy

Further to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 76th and 77th Sessions of the Conference have been submitted to Parliament. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Jamaica

Further to its previous observation, the Committee notes the statement of a Government representative to the Conference Committee in 1994, indicating that the Government was preparing a ministerial document in order to draw the attention of the competent authorities to the instruments adopted by the International Labour Conference. It trusts that the Government will soon indicate that the instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th and 77th Sessions of the Conference have been submitted to Parliament. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

In its previous comments, the Committee recalled the statement of a Government representative to the Conference Committee in 1984, to the effect that Convention No. 132, Recommendation No. 136 and the instruments adopted from the 61st to the 69th Sessions of the Conference had been submitted to Parliament. It expressed the hope that the Government would provide the other information and documents called for by the Memorandum adopted by the Governing Body (points I and II of the questionnaire) (except as concerns Conventions Nos. 149 and 150, which have been ratified, and the corresponding Recommendations Nos. 157 and 158) and that it would supply information on the proposals made and decisions taken with regard to the 45 instruments submitted to Parliament by a communication of the Minister of Labour and Employment, dated 22 November 1976. The Committee once again expresses the hope that the Government will shortly provide the information and documents in question.

Kenya

With reference to its previous observation, the Committee notes the information supplied by the Government in its report and the statement by a Government representative to the Conference Committee in 1994 to the effect that the delay in submission of the various instruments is due to certain administrative difficulties. The Committee also notes from the Government's report that the Government had already completed all the necessary technical work in respect of Conventions Nos. 154 to 174 as adopted during the 67th to 80th Sessions of the Conference.

The Committee wishes to recall in this respect that the obligation provided for in the ILO Constitution to submit the instruments adopted by the Conference to the competent authorities applies to all Conventions and Recommendations without exception. Nevertheless this obligation does not imply that governments must ratify or apply the instruments in question. The Committee trusts that the Government will soon be in a position to indicate that the instruments adopted at the 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions have been submitted to the competent authorities.

Lao People's Democratic Republic

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will indicate shortly that the instruments adopted at the 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th and 65th Sessions of the Conference have been submitted to the competent authorities. It would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted to the competent authorities.

Lebanon

With reference to its previous comments, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted from the 67th to the 77th Sessions of the Conference have been submitted to the competent authorities. The Committee hopes that the Government will soon be able to indicate that the remaining instruments adopted from the 31st to the 50th Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Lesotho

The Committee notes that the Government has not replied to its previous observation. It trusts that the Government will shortly indicate that Convention No. 157, adopted at the 68th Session of the Conference, as well as the instruments adopted at the 69th, 70th, 74th, 75th, 76th, 77th, 78th and 79th Sessions, have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted. It wishes to point out in this respect that the obligation to submit the instruments adopted by the Conference to the competent authorities, under the terms of the Constitution of the ILO, applies to all Conventions and Recommendations without exception.

Libyan Arab Jamahiriya

With reference to its previous observation, the Committee notes the information supplied by the Government in its report. It hopes that the Government will indicate shortly that the instruments adopted at the 74th, 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session have been submitted.

Madagascar

Further to its previous comments, the Committee notes the statement by a Government representative to the Conference Committee in 1994 concerning the reasons for the delay in the submission to the competent authorities of the instruments adopted by the Conference. It also notes the subsequent discussion and the conclusions of the Conference Committee. It trusts that the Government will soon supply information with regard to the proposals formulated at the time of the submission to the competent authorities of the instruments adopted at the 69th Session of the Conference and that it will indicate that the instruments adopted at the 55th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th and 79th Sessions have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Malawi

The Committee notes with regret that once again this year the Government has not replied to the observations that it has been making since 1992. It hopes that the Government will supply information concerning the submission to the competent authorities of the many Conventions adopted at various sessions (from the 55th to the 75th) of the Conference, which are requested in the Memorandum adopted by the Governing Body (point I of the questionnaire). The Committee also hopes that Conventions Nos. 143 (60th Session), 145 (62nd Session) and 169 (76th Session), as well as Recommendations Nos. 137 to 142, 145 to 151, 153 to 156, 158 to 165, 167 and 169 to 176 will soon be submitted to the competent authorities. It would also be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Mauritania

The Committee notes that the Government has not replied to its previous direct requests. It hopes that it will soon indicate that the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Mauritius

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that Convention No. 160 and Recommendation No. 170, adopted at the 71st Session of the Conference, have been submitted to the

National Assembly. The Committee trusts that the Government will soon be in a position to announce that the remaining instruments adopted at the 60th Session (Conventions Nos. 141 and 142, and Recommendations Nos. 149 and 150), 65th Session (Convention No. 152 and Recommendation No. 160) and 69th Session (Recommendation No. 167), as well as the instruments adopted at the 66th, 70th, 78th, 79th and 80th Sessions of the Conference, have been submitted to the National Assembly.

Mongolia

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will shortly be able to provide information on the proposals and decisions concerning the instruments adopted at the 68th, 69th, 70th and 71st Sessions of the Conference, which have already been submitted to the competent authorities. It would also be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Mozambique

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will shortly indicate that Recommendations Nos. 177 and 178 (77th Session) have been submitted to the competent authority and that the instruments adopted at the 69th, 70th, 71st and 72nd Sessions of the Conference, which have already been submitted to the Council of Ministers, have been submitted to the Assembly. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th and 80th Sessions of the Conference have been submitted.

Nepal

In the absence a reply to its previous comments, the Committee hopes that the Government will shortly provide the information required by the memorandum adopted by the Governing Body, particularly under point II(b) of the questionnaire, on the submission to Parliament of the remaining instruments from the 54th and 67th Sessions of the Conference (Conventions Nos. 132 and 154; Recommendations Nos. 135 and 136), and the instruments adopted at the 53rd, from the 55th to the 61st and at the 66th Sessions, and those adopted at the 75th, 76th, 77th, 78th and 79th Sessions.

Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted to the competent authorities.

Pakistan

Further to its previous observation, the Committee notes the information supplied by the Government, according to which the instruments adopted at the 75th to 80th Sessions of the Conference have been sent to the concerned governments, workers' and employers' organizations for ascertaining their views and the comments received from them will be incorporated in a summary to be submitted to the competent authority shortly.

The Committee hopes that the Government will be able to indicate in the near future that the instruments adopted from the 75th to 80th Sessions of the Conference have been submitted.

Papua New Guinea

In its previous comments, the Committee noted that the instruments adopted from the 70th to the 77th Sessions of the Conference had been submitted to the National Executive Council (the highest government authority) which had approved them, and that their submission for adoption by the national Parliament was only a formality. The Committee notes the statement by a Government representative to the Conference Committee in 1994 to the effect that the instruments adopted at the 77th and 78th Sessions of the Conference had been transmitted to the National Executive Council and communicated to Parliament for formal adoption. The Committee hopes that the Government will be able to indicate shortly that the instruments adopted from the 66th to the 77th Sessions of the Conference, as well as those adopted at the 78th, 79th and 80th Sessions, have been submitted to the competent authorities. It recalls that the obligation to submit does not imply that governments have to propose the ratification of the Conventions or the acceptance of the Recommendations in question. Governments have full freedom as to the nature of the proposals which they make concerning the Conventions and Recommendations which are submitted to the competent authorities.

Paraguay

With reference to its previous observation, the Committee notes the statement made by a Government representative before the Conference Committee in 1994 that his Government had undertaken to comply with the submission procedure and he was confident that the obligations concerning submission would be met in the near future. The Committee hopes therefore that the Government will shortly be able to indicate that the instruments adopted at the 68th, 69th (Recommendation No. 167), 70th, 71st, 72nd, 74th, 75th, 76th, 77th and 78th Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th and 80th Sessions have been submitted. The Committee recalls that the obligation to submit the instruments adopted by the Conference does not imply an obligation to ratify Conventions or accept Recommendations.

Peru

With reference to its previous comments, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 72nd, 74th, 75th, 77th, 78th and 80th Sessions of the Conference have been submitted to the Democratic Constituent Congress. The Committee hopes that the Government will be able to indicate in the near future that the instruments adopted at the 70th and 79th Sessions of the Conference have also been adopted.

Saint Lucia

The Committee notes with regret that once again this year the Government has not replied to the observations it has been making since 1990. It trusts that the Government will shortly indicate that the instruments adopted at the 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th and 76th Sessions of the Conference have been submitted to the competent authorities and that it will supply the information and documents requested in this respect in the Memorandum adopted by the Governing Body, particularly as regards the nature of the competent authority and the Government's proposals or comments on the action to be taken concerning the instruments in question (points I(a) and II(b) of the questionnaire). Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions have been submitted. It recalls in this connection that the authorities to which these instruments must be submitted are those empowered to legislate, and that the obligation to submit the instruments does not imply that governments must propose the ratification or application of the said instruments.

Sao Tome and Principe

The Committee notes that the Government has not replied to its previous direct request. It hopes that it will shortly indicate that the instruments adopted at the 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Seychelles

Further to its previous observation, the Committee notes the statement made by a government representative before the Conference Committee in 1994 to the effect that the legislation was in the process of being revised to bring it into line with the new Constitution and his country's international obligations, and that in future his Government will endeavour to honour the commitments deriving from its membership of the ILO. The Committee therefore expresses the firm hope that the Government will shortly indicate that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities, in accordance with article 19, paragraphs 5(b) and 6(b), of the ILO Constitution. It recalls in this respect that the authorities to which these instruments must be submitted are those empowered to legislate, in this instance, the People's Assembly. It recalls that the obligation to submit does not imply that Governments must propose the ratification of the Conventions or the acceptance of the Recommendations concerned. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities; they may also request technical assistance from the ILO in areas where they encounter difficulties.

Sierra Leone

With reference to its previous observation, the Committee notes the information supplied by the Government in its report and the statement by a Government representative to the Conference Committee in 1994 concerning the administrative difficulties which have delayed the submission procedure. It hopes that the Government will be in a position in the near future to indicate that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference, and Convention No. 146 and Recommendation No. 154, which were adopted at the 62nd Session, have been submitted to the competent authorities.

Solomon Islands

The Committee notes with regret that once again this year the Government has not replied to its previous observations, which it has been making since 1992. It hopes that the Government will indicate rapidly whether any proposals have been made concerning the instruments adopted at the 74th Session of the Conference, which have already been submitted to the competent authorities, and that it will specify their content, as required by the Memorandum adopted by the Governing Body (point II(c) of the questionnaire).

The Committee also hopes that the Government will soon be able to indicate that the instruments adopted at the 70th, 71st, 72nd, 75th, 76th, 77th, 78th and 79th Sessions have been submitted. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

Suriname

With reference to its previous comments the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 65th (Recommendations Nos. 160 and 161), 67th (Convention No. 154 and Recommendations Nos. 163, 164 and 165), 68th (Convention No. 158 and Recommendation No. 166), 71st (Convention No. 160 and Recommendation No. 170), 72nd, 79th and 80th Sessions of the Conference have been submitted to the Cabinet. It would be grateful if the Government would indicate whether the above-mentioned instruments have been submitted to the National Assembly. The Committee recalls in this connection that the authorities to which these instruments are to be submitted are the authorities empowered to legislate.

Swaziland

With reference to its previous observation, the Committee notes with interest the information supplied by the Government in its report to the effect that the instruments adopted at the 74th, 75th, 76th Sessions of the Conference, and Convention No. 170 and Recommendation No. 177 (77th Session) have been submitted to the competent authorities. It hopes that the Government will shortly indicate that the instruments adopted at the 78th, 79th and 80th Sessions of the Conference which are currently being studied by the Labour Advisory Board have been submitted to the competent authorities. It again expresses the hope that the Government will soon provide the information requested in the Memorandum adopted by the Governing Body, particularly under points I and II(a) of the questionnaire, concerning the instruments adopted at the 68th, 69th, 71st and 72nd Sessions, which have already been submitted. Furthermore, it recalls in this connection that the authorities to which these instruments are to be submitted are the authorities empowered to legislate.

Syrian Arab Republic

With reference to its previous observation, the Committee notes the information supplied by the Government in its report to the effect that it has requested the Ministry of Health, the Public Social Insurance Institution and the Ministry of Industry to indicate the effect given to the study carried out on Conventions Nos. 170 and 171 (77th Session). It also notes, according to the Government's report, that the instruments adopted at the 80th Session have been submitted to the Council of Ministers. It hopes that the Government will soon be able to indicate that the instruments adopted at the 66th, 70th, 78th, 79th and 80th Sessions and the remaining instruments adopted at the 69th (Recommendations Nos. 167 and 168), and 77th (Conventions Nos. 170 and 171) Sessions have been submitted to Parliament and that it will supply in this respect the information and documents requested in the Memorandum adopted by the Governing Body.

United Republic of Tanzania

The Committee notes the explanations provided by a Government representative to the Conference Committee in 1994 to the effect that the preliminary administrative procedure for the formal submission of the instruments adopted by the Conference to the competent authorities has practically been completed and that the Government firmly believes that it will be able to make up the delay in submission. It hopes that the Government will soon be in a position to announce that it has submitted to the National Assembly the instruments adopted at the 72nd, 74th, 75th and 76th Sessions of the Conference, as well as the instruments adopted at the 66th, 67th and 68th Sessions, which have been transmitted to the Ministry of Labour and Development. Finally, it hopes that the Government will indicate the date on which the instruments adopted from the 54th to the 65th Sessions, as well as at the 69th, 70th and 71st Sessions, were submitted to the Assembly. It would be grateful if the Government would also indicate whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Thailand

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 79th and 80th Sessions of the Conference have been submitted to the Cabinet. It hopes that it will shortly indicate that the instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th and 80th Sessions of the Conference, which have been submitted to the Cabinet, have been submitted to Parliament. Furthermore, the Committee hopes that the instruments adopted at the 72nd Session will also be submitted. The Committee would be grateful if the Government would supply in the near future a copy of the document by which these instruments were submitted to Parliament.

Trinidad and Tobago

Further to its previous comments, the Committee notes the statement by a Government representative to the Conference Committee in 1994 and the subsequent discussion. It hopes that the Government will soon be in a position to announce that the instruments adopted from the 74th to 76th Sessions of the Conference have been submitted to the competent authorities. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th and 80th Sessions of the Conference have been submitted to the competent authorities.

Venezuela

The Committee notes with regret that the Government has not answered its previous observations. It hopes that it will shortly indicate that the instruments adopted at the 74th and 76th Sessions of the Conference have been submitted to the competent authorities. The Committee hopes that the Government will shortly supply, in respect of the instruments adopted at the 70th and 72nd Sessions of the Conference, the information and documents requested in the memorandum adopted by the Governing Body, and that it will state whether Convention No. 161 and Recommendation No. 171 (71st Session), and the instruments adopted at the 75th, 77th and 78th Sessions have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th and 80th Sessions of the Conference have been submitted.

Yemen

The Committee notes that the Government has not replied to its previous observation. It hopes that it will shortly indicate that the instruments adopted at the 74th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 80th Session have been submitted.

Zaire

The Committee notes that the Government has not replied to its previous observation. In its previous comments, the Committee noted the statement made by a Government representative at the Conference Committee in 1992, to the effect that the procedure for the submission to the competent authorities of the instruments adopted from the 70th to 77th Sessions of the Conference has started, that the instruments adopted up to the 69th Session had been submitted only to the President of the Republic, and that when the National Conference has completed its work, the instruments adopted would also be submitted to both the President of the Republic and the National Assembly. The Committee also noted the discussion that followed this statement, and the conclusions adopted by the Conference Committee.

It hopes that the Government will shortly be able to state that the instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th and 79th Sessions of the Conference have been submitted to the competent authorities. The Committee also hopes that the Government will shortly be able to state that the instruments adopted at the 62nd and from the 66th to 69th Sessions of the Conference, which have already been submitted to the President of the Republic, have also been submitted to the National Assembly. Furthermore, the Committee asks the Government to indicate whether the instruments adopted at the 80th Session of the Conference have been submitted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Albania, Angola, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Burkina Faso, Burundi, Cameroon, Chile, Colombia, Comoros, Croatia, Cyprus, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Georgia, Germany, Ghana, Greece, Guinea-Bissau, India, Ireland, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lithuania, Malaysia, Mali, Republic of Moldova, Morocco, Namibia, Niger, Nigeria, Panama, Philippines, Portugal, Qatar, Romania, Rwanda, San Marino, Senegal, Spain, Sri Lanka, Sudan, Switzerland, The former Yugoslav Republic of Macedonia, Togo, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Zambia, Zimbabwe.***

Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

(31st to 80th Sessions of the International Labour Conference, 1948-93)[1]

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. Ratified Conventions are considered as having been submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31 to 70	71, 72, 74, 75, 76, 77, 78, 79 and 80
Albania	-	78, 79 and 80
Algeria	47 to 72	74, 75, 76, 77, 78 and 79
Angola	61 to 77	78, 79 and 80
Antigua and Barbuda	68	69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Argentina	31 to 79	80
Armenia	-	80
Australia	31 to 80	-
Austria	31 to 79	80
Azerbaijan	79 (C 173)	79 (R 180)
Bahamas	61 to 76	77, 78, 79 and 80
Bahrain	63 to 76	77, 78, 79 and 80
Bangladesh	58 to 69	70, 71 72, 74, 75, 76, 77, 78, 79 and 80

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[1] The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Barbados	51 to 80	-
Belarus	37 to 80	-
Belgium	31 to 75 and 77	76, 78, 79 and 80
Belize	68 to 76	77, 78, 79 and 80
Benin	45 to 77	78, 79 and 80
Bolivia	31 to 79	80
Bosnia and Herzegovina	-	80
Botswana	64 to 79	80
Brazil	31 to 50, 51 (C 127; R 128, 129, 130, 131), 53 (R 133, 134), 54 to 62, 63 (C 148; R 156, 157), 64 (R 158, 159), 65, 66, 67 (C 154, 155; R 163, 164, 165) 68 (C 158; R 166), 69 to 77	51 (C 128), 52, 53 (C 129, 130), 63 (C 149), 64 (C 150, 151), 67 (C 156), 68 (C 157), 78, 79 and 80
Bulgaria	31 to 76	77, 78, 79 and 80
Burkina Faso	45 to 76	77, 78, 79 and 80
Burundi	47 to 79	80
Cambodia	53, 54 and 56	55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Cameroon	44 to 68, 72 and 74	69, 70, 71, 75, 76, 77, 78, 79 and 80
Canada	31 to 80	-
Cape Verde	65 to 80	-
Central African Republic	45 to 74	75, 76, 7, 78, 79 and 80
Chad	45 to 74	75, 76, 77, 78, 79 and 80

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Chile	31 to 74, 76 and 77	75, 78, 79 and 80
China	69 to 80	-
Colombia	31 to 70, 71 (C 160; R 170) 75 (C 167; R 175), 76 and 77 (C 170; R 177)	71 (C 161; R 171), 72, 74, 75 (C 168; R 176), 77 (C 171; R 178), 78, 79 and 80
Comoros	65 to 78	79 and 80
Congo	45 to 53, 54 (C 131, 132), 55 (C 133, 134), 56, 58 (C 138; R 146), 59, 63 (C 149; R 157), 64 to 66 and 67 (C 154, 155)	54 (R 135, 136), 55 (R 137, 138, 139, 140, 141, 142), 58 (C 137; R 145), 60, 61, 62, 63 (C 148; R 156), 67 (C 156; R 163, 164, 165), 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Costa Rica	31 to 70, 71 (R 170, 171), 72 (R 172), 74 (R 173, 174), 75 (R 175, 176) 76 and 77 (R 177, 178)	71 (C 160, 161), 72 (C 162), 74 (C 163, 164, 165, 166), 75 (C 167, 168), 77 (C 170, 171), 78, 79 and 80
Côte d'Ivoire	45 to 80	-
Croatia	-	80
Cuba	31 to 80	-
Cyprus	45 to 77	78, 79 and 80
Czech Republic	80	-
Denmark	31 to 80	-
Djibouti	64, 65, 67, 71 and 72	66, 68, 69, 70, 74, 75, 76, 77, 78, 79 and 80
Dominica	68 to 79	80
Dominican Republic	31 to 78	79 and 80
Ecuador	31 to 72 and 76	74, 75, 77, 78, 79 and 80
Egypt	31 to 80	-

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
El Salvador	31 to 61, 63 (C 149), 64 (C 150), 69 (C 159; R 168), and 71 (C 160; R 170)	62, 63 (C 148; R 156, 157), 64 (C 151; R 158, 159), 65, 66, 67, 68, 69 (R 167), 70 71 (C 161; R 171), 72, 74, 75, 76, 77, 78, 79 and 80
Equatorial Guinea	67 to 79	80
Eritrea	-	80
Estonia	80	79
Ethiopia	31 to 79	80
Fiji	59 to 78	79 and 80
Finland	31 to 80	-
France	31 to 80	-
Gabon	45 to 72, 75 to 79	74 and 80
Georgia	-	80
Germany	34 to 70, 71, 72, 74, 75 (C 167; R 175) and 76	75(C 168; R 176), 77, 78, 79 and 80
Ghana	40 to 79	80
Greece	31 to 78	79 and 80
Grenada	66 to 80	-
Guatemala	31 to 70, 71 (C 160, 161; R 171), 72 and 75 (C 167; R 175)	71 (R 170), 74, 75 (C 168; R 176), 76, 77, 78, 79 and 80
Guinea	43 to 75	76, 77, 78, 79 and 80
Guinea-Bissau	63 to 78	79 and 80
Guyana	50 to 72	74, 75, 76, 77, 78, 79 and 80
Haiti	31 to 66, 67 (C 156; R 165) 69, 70 to 74 and 75 (C 167)	67 (C 154, 155; R 163, 164), 68, 75 (C 168; R 175, 176), 76, 77, 78, 79 and 80
Honduras	39 to 66, 68, 69, 71, 72, 74 (C 164, 165, 166; R 174) and 75 (C 167), 76	67, 70, 74 (C 163; R 173), 75 (C 168; R 175, 176), 77, 78, 79 and 80

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Hungary	31 to 75	76, 77, 78, 79 and 80
Iceland	31 to 80	-
India	31 to 72, 75 to 77	74, 78, 79 and 80
Indonesia	33 to 80	-
Islamic Republic of Iran	31 to 80	-
Iraq	31 to 80	-
Ireland	31 to 71, 74, 75 and 77	72, 76, 78, 79 and 80
Israel	32 to 80	
Italy	31 to 77	78, 79 and 80
Jamaica	47 to 69	70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Japan	35 to 80	-
Jordan	39 to 78	79 and 80
Kazakhstan	-	80
Kenya	48 to 68	69, 70, 71, 72, 74, 75, 76 77, 78, 79 and 80
Republic of Korea	79 and 80	-
Kuwait	45 to 72, 74, 75 (C 167; R 175), 76, 78, 79 and 80 (C.174)	75 (C 168; R 176), 77 and 80 (R 181)
Kyrgyzstan	-	79, and 80
Lao People's Democratic Republic	66 to 79	48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65 and 80
Latvia	80	79

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Lebanon	31 (C 88, 89, 90; R 83), 32 (C 95, 98; R 85), 34 (C 100; R 90), 35 (C 102, 103), 40 (C 105, 106; R 103), 42 (C 111; R 111), 44 (C 115), 45 (C 116), 46 (C 117, 118), 47 (C 119), 48 (C 120, 121, 122; R 120, 122), 49 (C 123, 124), 50 (C 125, 126) and 51 to 77	31 (C 87), 32 (C 91, 92, 93, 94, 96, 97; R 84, 86, 87), 33, 34 (C 99; R 89, 91, 92), 35 (C 101; R 93, 94, 95), 36, 37, 38, 39, 40 (C 107; R 104), 41, 42 (C 110; R 110), 43, 44 (R 113, 114), 45 (R 115), 46 (R 116, 117), 47 (R 118, 119), 48 (R 121), 49 (R 123, 124, 125), 50 (R 126, 127), 78, 79 and 80
Lesotho	66, 67, 68 (C 158; R 166), 71 and 72	68 (C 157), 69, 70, 74, 75, 76, 77, 78, 79 and 80
Liberia	31 to 75	76, 77, 78, 79 and 80
Libyan Arab Jamahiriya	35 to 72	74, 75, 76, 77, 78, 79 and 80
Lithuania	-	79 and 80
Luxembourg	31 to 80	-
Madagascar	45 to 54, 56 to 70	55, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Malawi	49 to 54, 55 (C 133, 134), 56 58 (C 137, 138), 59 (C 139, 140), 60 (C 141, 142), 61, 62 (C 146, 147), 63 (C 148, 149; R 157), 64 (C 150, 151), 65 (C 152, 153), 67 (C 154, 155, 156), 68, 69 (C 159; R 168), 71 (C 160, 161), 72 (C 162), 74 (C 163, 164, 165, 166) and 75 (C 167, 168)	55 (R 137, 138, 139, 140, 141, 142), 58 (R 145, 146), 59 (R 147, 148), 60 (C 143; R 149, 150, 151), 62 (C 145; R 153, 154, 155), 63 (R 156), 64 (R 158, 159), 65 (R 160, 161), 66, 67 (R 163, 164, 165), 69 (R 167), 70, 71 (R 170, 171), 72 (R 172), 74 (R 173, 174), 75 (R 175, 176), 76, 77, 78, 79 and 80
Malaysia	41 to 76	77, 78, 79 and 80
Mali	44 to 78	79 and 80
Malta	49 to 80	-
Mauritania	45 to 77	78, 79 and 80

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Mauritius	53 to 59, 60 (C 143; R 151), 61, 62, 63 (C 148; R 156), 64, 65 (C 153; R 161), 67, 68, 69 (C 159; R 168), 71 and 72 to 77	60 (C 141, 142; R 149, 150), 63 (C 149; R 157), 65 (C 152; R 160), 66, 69 (R 167), 70, 78, 79 and 80
Mexico	31 to 80	-
Republic of Moldova	-	79 and 80
Mongolia	53 to 77	78, 79 and 80
Morocco	39 to 76 and 79	77, 78 and 80
Mozambique	61 to 76 and 77 (C 170, 171)	77 (R 177, 178), 78, 79 and 80
Myanmar	31 to 80	-
Namibia	78, 79 and 80	80
Nepal	51 to 78	79 and 80
Netherlands	31 to 80	-
New Zealand	31 to 80	-
Nicaragua	40 to 80	-
Niger	45 to 78	79 and 80
Nigeria	45 to 79	80
Norway	31 to 80	-
Pakistan	31 to 74	75, 76, 77, 78, 79 and 80
Panama	31 to 79	80
Papua New Guinea	61 to 65	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Paraguay	40 to 67 and 69 (C 159; R 168)	68, 69 (R 167), 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Peru	31 to 69, 71 to 78 and 80	70 and 79
Philippines	31 to 77 and 80	78 and 79

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Poland	31 to 80	-
Portugal	31 to 79	80
Qatar	58 to 79	80
Romania	39 to 78 and 80	79
Russian Federation	37 to 80	-
Rwanda	47 to 79	80
Saint Lucia	-	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
San Marino	69 to 79	80
Sao Tome and Principe	68 to 76	77, 78, 79 and 80
Saudi Arabia	61 to 80	-
Senegal	44 to 78	79 and 80
Seychelles	-	63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Sierra Leone	45 to 62 (C 145, 147; R 153, 155)	62 (C 146; R 154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Singapore	50 to 80	-
Slovakia	79 and 80	-
Slovenia	79 and 80	-
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78 79 and 80
Somalia	45 to 75	76, 77, 78, 79 and 80
Spain	39 to 62, 63 (C 148; R 156), 64 to 74, 75 (C 167; R 175), 76, 77 and 78	63 (C 149; R 157), 75 (C 168; R 176), 79 and 80
Sri Lanka	31 to 74	75, 76, 77, 78, 79 and 80

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Sudan	39 to 78	79 and 80
Suriname	61 to 64, 65 (C 152, 153), 66, 67 (C 155, 156), 68 (C 157), 69, 70, 71 (C 161, R 171), 74 to 78	65 (R 160, 161), 67 (C 154; R 163, 164, 165), 68 (C 158, R 166), 71 (C 160, R 170), 72, 79 and 80
Swaziland	60 to 76 and 77	78, 79 and 80
Sweden	31 to 80	-
Switzerland	31 to 79	80
Syrian Arab Republic	31 to 65, 67, 68, 69 (C 159), 71, 72, 74, 75 and 76	66, 69 (R 167, 168), 70, 77, 78, 79 and 80
United Republic of Tanzania	46 to 65, 69 to 71	66, 67, 68, 72, 74, 75, 76, 77, 78, 79 and 80
Thailand	31 to 71	72, 74, 75, 76, 77, 78, 79 and 80
The former Yugoslav Republic of Macedonia	-	80
Togo	44 to 79	80
Trinidad and Tobago	47 to 72	74, 75, 76, 77, 78, 79 and 80
Tunisia	39 to 80	-
Turkey	31 to 80	-
Uganda	47 to 78	79 and 80
Ukraine	37 to 80	-
United Arab Emirates	58 to 79	80
United Kingdom	31 to 80	-
United States	31 to 80	-
Uruguay	31 to 76, 77 (C 171; R 178), 78 and 79	77 (C 170; R 177) and 80

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Uzbekistan	-	80
Venezuela	31 to 70, 71 (C 160; R 170) and 72	71 (C 161; R 171), 74, 75, 76, 77, 78, 79 and 80
Viet Nam	80	-
Yemen	49 to 72 and 75	74, 76, 77, 78, 79 and 80
Yugoslavia	31 to 75	76, 77, 78, 79 and 80
Zaire	45 to 69	70, 71, 72, 74, 75, 76, 77, 78, 79 and 80
Zambia	49 to 77 and 79	78 and 80
Zimbabwe	66 to 79	80

Appendix II. Overall position of member States as at 3 March 1995

Sessions at which decisions were adopted	Number of States in which, according to information supplied by Government,			Number of States which were Members of the Organisation at the time of the session
	All the texts have been submitted	Some of these texts have been submitted	None of these texts have been submitted (including cases in which no information has been supplied by the Government)	
31 (June 1948)	58	2	–	60
32 (June 1949)	59	2	–	61
33 (June 1950)	61	–[1]	2	63
34 (June 1951)	62	2	–	64
35 (June 1952)	64	2	–	66
36 (June 1953)	64	–	2	66
37 (June 1954)	67	–[1]	2	69
38 (June 1955)	67	1	2	69
39 (June 1956)	74	–	2	76
40 (June 1957)	75	2	–	77
41 (April/May 1958)	77	1	1	79
42 (June 1958)	78	1	–	79
43 (June 1959)	78	1	1	80
44 (June 1960)	81	1	1	83
45 (June 1961)	99	2	–	101
46 (June 1962)	101	1	–	102
47 (June 1963)	107	1	–	108
48 (June/July 1964)	108	1	1	110
49 (June 1965)	112	1	1	114
50 (June 1966)	111	3	1	115
51 (June 1967)	117	–	–	117
52 (June 1968)	115	–[1]	3	118
53 (June 1969)	119	1	1	121
54 (June 1970)	117	2	2	121
55 (October 1970)	116	3	2	121
56 (June 1971)	120	–	1	121
58 (June 1973)	118	3	2	123
59 (June 1974)	122	1	2	125
60 (June 1975)	121	2	3	126
61 (June 1976)	123	–	8	131
62 (October 1976)	123	1	8	132
63 (June 1977)	112	5	18	135
64 (June 1978)	125	4	7	136
65 (June 1979)	125	2	12	139

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[1] At this session the Conference adopted one Recommendation only.

Sessions at which decisions were adopted	Number of States in which, according to information supplied by Government,			Number of States which were Members of the Organisation at the time of the session
	All the texts have been submitted	Some of these texts have been submitted	None of these texts have been submitted (including cases in which no information has been supplied by the Government)	
66 (June 1980)	121	–[1]	23	144
67 (June 1981)	126	6	13	145
68 (June 1982)	126	4	20	150
69 (June 1983)	128	3	19	150
70 (June 1984)	120	–[1]	30	150
71 (June 1985)	121	6	23	150
72 (June 1986)	122	1	27	150
74 (Sept.-Oct. 1987)	113	2	35	150
75 (June 1988)	117	6	27	150
76 (June 1989)	98	–	52	150
77 (June 1990)	81	–	69	150
78 (June 1991)	75	–	74	149
79 (June 1992)	65	1	91	157
80 (June 1993)	46	1	124	171

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[1] At this session the Conference adopted one Recommendation only.

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